

***United States Court of Appeals
for the Second Circuit***



APPENDIX

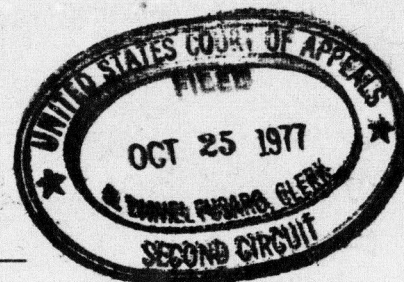
77-1324

To be argued by
IVAN S. FISHER

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA, :
Appellee, :
-against- :
FRANK MOTEN, :
Appellant. :
-----X

B
P/S



APPELLANT'S APPENDIX

VOLUME I

IVAN S. FISHER
Attorney for Appellant
400 Park Avenue
New York, New York 10022
(212) 355-2380

JOSEPH H. ADAMS
Law Clerk

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA, :
Appellee, :
-against- :
FRANK MOTEN, :
Appellant. :
-----X

APPELLANT'S APPENDIX

VOLUME I

INDEX TO APPENDIX

<u>Volume I</u>	<u>Page</u>
NOTICE OF APPEAL	i
DOCKET SHEET	ii
DEFENDANT'S NOTICE OF MOTION	A-1
AFFIDAVIT OF IVAN S. FISHER	A-4
AFFIDAVIT OF RICHARD J. MALINE	B-1
LETTER OF ISABELLE BLAU	B-3
AFFIDAVIT OF ISABELLE BLAU	B-5
AFFIDAVIT OF DAVID V. KEEGAN	B-7
AFFIDAVIT OF DANIEL J. BELLER	C-1
MEMORANDUM AND ORDER	D-1
TRANSCRIPT OF 9/20/76, IN CAMERA CONFERENCE	E-1
TRANSCRIPT OF 9/20/76, VOIR DIRE HEARING	F-4194

<u>Volume II</u>	
TRANSCRIPT OF 1/31/77, HEARING	G-1
TRANSCRIPT OF 3/24/77, HEARING	H-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
-against- :
FRANK MOTEN, : 76 Cr. 324 (RO)
Defendant. :
-----X

NOTICE OF APPEAL

Notice is hereby given that Frank Moten appeals to the United States Court of Appeals from the order entered in this action on July 5, 1977, denying Moten's new-trial motion, and from each and every part thereof.

Dated: New York, New York
July 14, 1977

Yours, etc.,

FISHER & ULLMAN -
Attorneys for Defendant
Frank Moten
400 Park Avenue
New York, New York 10022
(212) 355-2380

To: Robert B. Fiske, Jr.
United States Attorney
Southern District of New York
One St. Andrews Plaza
New York, New York 10007
Daniel J. Beller, AUSA

PETTY OFFENSE PO
 MINOR OFFENSE MO
 MISDEMEANOR ME
 FELONY Fel **X** 0208 1

JUDGE ~~XXXXXX~~ Assigned

0862

vs. MOTEN, FRANK a/k/a
 "Uncle"
 (LAST, FIRST, MIDDLE)

Case Filed
 Mo Day
 04 05
 No. of Defs
 33

76 0324

04

U.S. FILE SECTION
 21:846
 21:848
 21:812,841

OFFENSES CHARGED
 Conspr. to viol. Narco. Laws.
 Continuing narcotics.
 Distr. & possess. of Cocaine II.

ORIGINAL COUNTS
 1
 3
 8-11

U.S. MAG. CASE NO. 76-510

RELEASE
 AMT ☐ Fugitive
 Set ☐ Pers. Recog
 PSA
 conditions
 10% Deposit
 Surety Bond
 Collateral
 3rd
 Other

4/21/76

4-5-76

4-29-76

SENTENCE
 Disposition of Charges
 Convicted ☐ On All Charges
 Acquitted ☐ On Lesser Offense(s)
 Dismissed ☐ WOP ☐ W
 On Government's Motion

MAGISTRATE

Search Warrant Subpoena Arrest Warrant Issued COMPLAINT OFFENSE (In Complaint)	INITIAL NO INITIAL APPEARANCE DATE PRELIMINARY EXAMINATION OR REMOVAL HEARING WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT	INITIAL NO OUTCOME DISMISSED HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
--	--	---

U.S. Attorney or Asst

Daniel J. Beller
 791-1992

ATTORNEYS

Defense ☐ GJA ☒ Ret. ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD
 Arnold E. Brown, 277 Bway, NYC 10007
 Tel. 964 3456

* Show last names and suffix numbers of other defendants on same indictment/information

Alvarez, et al.

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c) (d)
4-5-76		Indictment filed.	Lasker, J.
		Indictment ordered sealed.	Lasker, J.
4-20-76		Indictment ordered unsealed. B/W ordered. B/W issued.	
		Indictment ordered resealed.	Brieant, J.
4-21-76		Indictment ordered unsealed.	Brieant, J.
4-27-76		Motion for reargument granted and the reargument for the reduction of bail is still denied.	MacMahon, J.
4-29-76		Def. (Atty. present) enters plea of not guilty. Bail continued as fixed by Magistrate \$600,000. Remanded. Case assigned to Judge Owen. Atty. directed to report to chambers immediately.	MacMahon, J.
5-5-76		Filed the following papers rec'd from Mag. Bernikow (Mag. #76-510) Docket Entry Sheet Criminal Complaint Disposition Sheet Warrant of Arrest - executed 4/21/76 Notice of Appearance by Joseph Goldberg, 225 Bway, NYC 10007 Tel. 964-3456	

DATE	IN PROCEEDINGS (continued)	PAGE TWO	EXCESSIVE DELAY
4-27-76	Filed Dfts. Application for release.		
4-27-76	Filed Memo. End. on Application for release. Motion for reargument granted & an reargument the motion is still denied.Mac Mahon (mailed notice)		
4-29-76	Frank Moten (Atty. Arnold E. Brown present) Bail reduction application Bail cont'd at \$600,000,000. Dft. Remanded" Denied Owen J.		
5-13-76	Issued Remand.		
5-13-76	Filed Dft.s Notice of Motion for an order directing dfts. bail be reduced & further relief.		
5-18-76	Filed Mag. Final Commitment.		
5-18-76	Filed Gov'ts Memorandum in opposition to Moten's Application for xxx a reduction in bail.		
5-21-76	Filed Dfts. Reply Memorandum in support of the application to reduce bail.		
5-21-76	Filed Dfts. Affidvt. & Memorandum in support of various pretrial applications.		
5-24-76	Filed Dfts. Notice of Motion for order granteing further relief Ret. 6/1/76.		
5-25-76	Dft. Frank Moten Appears (Atty. Nancy Rusnor Present) for bail application. Application is denied.....Owen J.		
6/1/76	All Motions Rtn. Jun 1st Are Adjourned to June 4th @2:00P.M.		
6-7-76	Filed Dfts. Notice of Appeal from Order denying motion to reduce bail. XXXX dtd. 5-25-76 (mailed xx notice)		
6-8-76	Filed transcript of record of proceedings, dated 4-27-76		
6-8-76	Filed transcript of record of proceedings, dated 4-26-76		
6-3-76	Filed transcript of record of proceedings, dated 4-29-76-10:30 AM.		
6-15-76	Filed Gov'ts. Bill of Particulars.		
6-16-76	Filed Opinion #44578. The Gov'ts Memorandum of law 17 Matters with prepared to accede as to each dft. as indicated. The Gov't. concession is made the order of this court, & the Gov't is to forthwith comply therewith.....Owen J. (mailed notice)		
6-18-76	Filed Order that each dft. represented yb counsel who is appointed under Criminal Justice Act is authorized to retain investigation services & expend up to the statutory limit of \$300.00 & dfts. may at their option retain the named investigator & apply their authorized moneys severally to his fee as allowed by this Court...Owen J. (mailed notice)		
6-23-76	Filed notice of certification & transmittal of the record on appeal to the U.S.C.A.		

Goodrich

DATE	Page #3	PROCEEDINGS
6-30-76	Filed order that all voir dire Questions are to be submitted by 7-14-76 OWEN.J. m/n/.	
6-29-76	Filed Opinion #44673 .Deft's John Capra, Steven Dellacava and Leoluca Guarino, are collectively sever for a later trial. Beyond the foregoing, all motions to sever ar denied.OWEN.J.m/n.	
*6-21-76	Suppression Held.....Owen J.	
7-7-76	Filed Memorandum & Order. Dft. Frank Moten moves to suppress all interceptions of his conversations as indicated. It is accordingly denied..The foregoing is so ordered.....Owen J. (mailed notice)	
7-7-76	Filed Memorandum & order. It is ordered in the interests of justice, that the trial of this action is adjourned from 7-19-76 to 8/10/76, to begin at 10:00 a.m. in Courtroom 318Owen J. (mailed notice)	
7-9-76	Filed Memorandum Order Trial has been adjourned to 8-10-76, proposed voir dire questions due 8-3-76 directly to Chambers.....Owen J.(mailed notice)	
7-15-76	Filed Opinion #44760. All Motions of dfts. as moved for discovery & inspection & bill of particulars, are denied. Certain dfts. moved for psychiatric information as indicated, The Foregoing is so Ordered.....Owen J. (mailed notice)	
6-18-76	<i>Filed transcript dated May 25, 1976 (Deft Moten)</i>	
	<i>Filed transcript of record of proceedings 5-6-76</i>	
	<i>Filed transcript of record of proceedings 5-7-76</i>	
	<i>Filed transcript of record of proceedings 5-20-76</i>	
	<i>Filed transcript of record of proceedings 5-10-76</i>	
7-16-76	Filed Opinion #44768. All motions seeking disclosure of Gov't witnesses are denied. Dfts. motions to disclose indentity of cooperating dfts. denied. Various Dfts. move to dismiss indictment on grounds of preindictment delay, motions denied. Movmants seeking order enjoining Gov't from cross examining them about past record, any movant seeking this issue , hearing will be held on 7/21/76 in Room 318. All other motions denied as indicated.....Owen J. (mailed notice)	
7-20-76	Filed Opinion #44769. Gov't orderd to deliver in camera inspection as indicated.Owen J. (mailed notice)	
08-02-76	Filed Deft's. affidavit & notice of motion to preclude use of wiretap evidence.	
08-04-76	Filed Deft's. proposed voir dire examination of the jury panel.	
8-9-76	All Counsel Presnt for P.T C.	

(Cont'd)

(iv)

DATE	Judge Owen	PROCEEDINGS
8-10-76	Trial Begun - Jury Selection begun Interpreters Gustave Hoffman & Anita Zevallos sworn. Suppression Hearing held for Dft. Frank Moten & Adjourned to 8/11/76.	
8-11-76	Jury Selection Cont'd - Gov't makes motion to Remand Dfts. William Hightower, Sidney Foster, Joseph Sampson, Lois Sampson - Decision Reserved!	
8-12-76	Jury Selection Cont'd Suppression hearing Cont'd & Concluded.	
8-11-76	Filed True Copy of USCA Mandate. Petition for writ of mandamus is denied. (mailed notice)	
8-18-76	Trial Cont'd - Openings Cont'd	
8-19-76	Trial Cont'd	
8-20-76	Trial Cont'd	
8-23-76	Trial Cont'd	
8-24-76	Trial Cont'd	
8-25-76	Trial Cont'd	
8-26-76	Trial Cont'd	
8-27-76	Trial Cont'd	
8-30-76	Trial Cont'd	
8-31-76	Trial Cont'd	
9-1-76	Trial Cont'd	
9-2-76	Trial Cont'd	
9-3-76	Trial Cont'd	
9-7-76	Trial Cont'd - Hearing Held Concerning Authority of Tape 3505-05 concerning Dft. Intersome Court Finding: Tapes Are Original Unaltered Version.....Owen J.	
9-8-76	Trial Cont'd	
9-9-76	Trial Cont'd	
9-10-76	Trial Cont'd	
9-13-76	Trial Cont'd -	
9-14-76	Filed Order that each counsel who is appointed under the Criminal Justice Act, is authorized to file an interim voucher for services rendered under the Criminal Justice Act from the date of their appointment up to & including 9/10/76, the actual trial having commenced on 8/10/76 & continuing & the assigned counsel may file a final voucher subsequent to the termination of trial as to their respective dfts. subject to the ultimate allowance of this court.....Owen J. (mn)	
9-14-76	Trial Adj. to 9-15-76	
9-15-76	Trial Cont'd	
9-16-76	Trial Cont'd	
9-17-76	Trial Cont'd	
9-20-76	Trial Cont'd Juror #10 is excused & replaced by Alt. #1.	
9-21-76	Trial Cont'd	
9-22-76	Trial Cont'd	
9-23-76	Filed True Copy of USCA Mandate. District Court Order is Affirmed. Judgment Ent. 9-24-76 Clerk, Ent. 10-1-76. (mn)	
10-8-76	Filed Gov'ts Application for an order of immunity as to Peter J. Fiumara, witness	
10-8-76	Filed Order that Peter J. Fiumara give testimony & that any testimony etc. shall be subject to immunity provisions as indicated. This Order shall not take effect until Peter J. Fiumara refuses to testify as indicated.....Owen J	

(Cont'd)

(v)

DATE	PROCEEDINGS	Date Order Judgment No
9-23-76	Trial Cont'd	
9-24-76	Trial Cont'd	
9-27-76	Trial Cont'd	
9-28-76	Trial Cont'd	
9-29-76	Trial Cont'd	
9-30-76	Trial Cont'd	
10-1-76	Trial Cont'd	
10-4-76	Trial Adj.	
10-5-76	Trial Cont'd	
10-6-76	Trial Cont'd	
10-7-76	Trial Cont'd	
10-8-76	Trial Cont'd	
10-12-76	Trial Cont'd - Gov't Rests. Motions.	
10-13-76	Trial Cont'd Motions Cont'd	
10-14-76	Trial Cont'd	
10-15-76	Trial Cont'd	
10-29-76	Filed Gov't Motion requested marshalling of the evidence.	
10-18-76	Trial Cont'd	
10-19-76	" "	
10-20-76	Trial Adj. to 10-21-76.	
10-21-76	Trial Cont'd - Gov't Summation begun...Owen J.	
10-22-76	Summation Cont'd	
10-25-76	" "	
10-26-76	" "	
10-27-76	" "	
10-28-76	" "	
10-29-76	" "	
11-1-76	" "	
11-2-76	" "	
11-3-76	" & concluded Gov't Rebuttal Begun.	
11-4-76	Gov't Rebuttal Cont'd.	
11-12-76	Filed One Sealed Envelope - dtd. 10-6-76 - Ordered Sealed by the Court on this date.....Owen J.	
11-12-76	Filed One Sealed Envelope - dtd. 8-30-76 - Ordered Sealed by the Court on this date.....Owen J.	
11-12-76	Filed One Sealed Envelope - dtd. 11-4-76. Notes from Deliberating Jur. Ordered Sealed by the Court.....Owen J.	
11-12-76	Filed One Sealed Envelope - dtd. 8-13-76. Questions subm. to Court by counsel in jury selection.....Ordered Sealed by the Court...Owen J.	
11-12-76	Filed One Envelope Sealed ..dtd. 11-15-76. Ordered Sealed by the Court 10-6-76.Owen J.	
11-12-76	P.S. I. Ordered for each dft. - Verdict - Sentencing date for all dfts. - Jan. 10, 1976 from 10:00 A.M. on....Dft. 1 - Guilty: Cts. 3, 13 & 11 - Hung Jury - Mistrial Granted. Cts. 8, 9 - Guilty. Bail Motion to be Argued 11-18-76.....Owen J.	
11-5-76	Trial Cont'd - Charge to Jury	
11-6-76	Charge Cont'd & Deliberations Begun.	
11-7-76	Deliberations Cont'd	
11-8-76	" "	
11-9-76	" "	
11-10-76	" "	
11-11-76	" "	
11-12-76	" & Concluded.	

Page 6.

[illegible]

DATE	PROCEEDINGS
3-3-77	Filed transcript of record of proceedings, dated 12-14-76
3-3-77	Filed transcript of record of proceedings, dated 12-17-76
3-2-77	Filed Govt's Affidavit in opposition to deft's motion for an order directing the Bureau of Prisons not to transfer the deft from the MCC.
3-4-77	Filed MEMO-ENDORSED on deft's motion filed 2-24-77 directing the U.S. Bureau of Prisons not to transfer the deft. - Motion denied. So ordered OWEN, J. m/n
3-8-77	Filed ORDER TO SHOW CAUSE why an order should not be entered directing Paul Bergman to disclose to deft and Yvonne Chermault a certain tape recording and contemporaneous notes made during the course of an interview. RET: 3-8-77 at 4:30 P.M. So ordered OWEN, J.
3-11-77	Filed Notice of the original record being certified and transmitted to the USCA.
3-23-77	Filed Govts. Affidvt. in opposition to defts. motions for a post trial interrogation of the jury in the trial.
3-23-77	Filed Govts. Memorandum of Law.
4-11-77	Filed Govt's SENTENCING MEMORANDUM
6-1-77	Filed transcript of record of proceedings, dated 3-8-77
6-1-77	Filed transcript of record of proceedings, dated 3-17-77
6-1-77	Filed transcript of record of proceedings, dated 3-24-77
7-5-77	Filed MEMORANDUM AND ORDER - deft., made post-trial motions seeking leave to interview the trial jurors about their knowledge concerning the dismissed juror # 10 during trial - Denied. OWEN, J. m/n
7-13-77	Filed Deft's NOTICE OF APPEAL to the USCA from the order of 7-5-77 denying deft's new trial motion. Mailed Notice to AUSA and Counsel for the Appellant.
8-2-77	Filed Notice of the deft's Original Record being transmitted and certified for the USCA.

"A"

A1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

-against- :

FRANK MOTEN, :

Defendant. :

76 Cr.324 (RO)
NOTICE OF MOTION

-----X
S I R S:

PLEASE TAKE NOTICE that, upon the annexed affidavit of Ivan S. Fisher, Esq., defendant Frank Moten will move this Honorable Court, at a date and time convenient to the Court, for an order, pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and Rule 33, Federal Rules of Criminal Procedure, granting the following relief:

1. Directing the Government to disclose any and all information now in its possession, or which, through the exercise of due diligence, can be brought within its possession, which tends to show whether:

(a.) William T. Keno, a trial juror in the above-captioned case, had the support, cooperation, or assistance, of any other juror in an effort to obtain a corrupt result in the above-entitled case;

(b.) William T. Keno discussed, or made known to any other juror, his effort to contact one or more of the defendants for any purpose;

(c.) Any juror other than William T. Keno became aware, by whatever manner or means, prior to verdict in the above-entitled case, of any fact, including but not limited to the following:

- i. That juror Keno had been arrested by federal authorities;
- ii. That juror Keno made an effort to communicate with any defendant during the course of the trial;
- iii. Whether anyone made any effort to communicate with juror Keno during the course of the trial;
- iv. Whether any defendant, or anyone related to any defendant, in this case, communicated with juror Keno in any manner during the course of the trial; or
- v. Whether anyone made any effort to secure a corrupt result in this case.

2. Unsealing, or otherwise making available to counsel, pages 4177 through 4193 of the trial record in the above-captioned case;

3. Unsealing, or otherwise making available to counsel, the complaint and other sealed court documents filed in a criminal prosecution now pending in the Southern District of New York entitled United States v. William T. Keno;

4. Granting defendant the right to interview the trial jurors regarding their knowledge of the activities of William Keno, as detailed in ¶1, supra, as well as the intrusion into deliberations of information regarding various defendants gained by the jurors from news articles published during the trial;

5. Granting defendant leave to file such other and further motions, relating to his pending motion for a new trial, as may be appropriate upon the Government's compliance with an order granting the relief sought in (1), (2), (3) and (4) above; and

6. Granting such other, further and different relief as to this Court may seem just and proper.

DATED: New York, New York
February 18, 1977

Yours, etc.

IVAN S. FISHER
Attorney for Defendant
Frank Moten
410 Park Avenue
New York, New York 10022
(212) 355-2380

To: Daniel J. Beller, Esq.
Assistant United States Attorney
1 St. Andrews Plaza
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA :

-against- :

76 Cr. 324 (RO)
AFFIDAVIT

FRANK MOTEN, :

Defendant. :

-----X

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

IVAN S. FISHER, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and am the attorney for defendant Frank Moten. I submit this affidavit in support of the foregoing discovery motion made in connection with defendant's motion for a new trial, pursuant to Rule 33, Federal Rules of Criminal Procedure.

2. The underlying thrust of defendant Moten's new trial motion has already been set forth, in general fashion, in open court on the day of sentencing (See Moten Sentence Minutes at 3-6). During the course of trial, it now appears that former juror William T. Keno made overtures to one or more of the defendants, or their families, in an effort to obtain money for the purpose of effecting a corrupt resolution of the case. Although juror Keno was immediately dismissed from the panel, and indeed, was subsequently arrested, serious question remains suggesting that the stain of corruption may well have tainted the verdict, because other jurors either were involved in, or were aware of, Keno's corrupt scheme.

3. Your deponent wishes to assure the Court that, in compliance with the Court's order of January 31, 1977, he has neither interviewed, contacted, nor caused to be interviewed or contacted, directly or indirectly, any of the petit jurors who served at trial in this case. However, my own independent investigation has revealed a substantial basis for believing that other jurors have been involved in Keno's attempt to extort money from the defendants, or, at least, that other jurors, in fact were aware, prior to verdict, of efforts by juror Keno, and/or others, to communicate with the defendants for the purpose of negotiating a corrupt result in this case. In the event that either of these events occurred, a new trial is mandatory.

4. Upon information and belief, on the afternoon of Friday, September 17, 1976, defendant Sebastian Intersimone's sister, Yolanda, was approached on lower Broadway by juror Keno while the defendant, his brother-in-law, and his attorney were in a nearby office building. At the time juror Keno approached her, he asked whether she was "Bennie's (Mr. Intersimone's) wife. She replied that she was his sister. Juror Keno thereupon is alleged to have stated, "Well, I have a message for Bennie." At this point, realizing the conversation's serious implications, Intersimone's sister is supposed to have responded, in substance, "Oh, you're a juror. I can't talk to you." Juror Keno is alleged to have rejoined, "Okay, I'll get the message to Bennie on Monday." Intersimone's sister immediately reported the conversation to her brother's attorney, who promptly informed the Court and the Government of these events the following Monday, September 20, 1976. While the transcript of the in camera con-

ference regarding this incident has been sealed (Tr. 4177-4193), it is believed that those minutes contain the Court's colloquy with Intersimone's counsel and the Government regarding the incident as well as the actual voir dire of juror Keno.

(Curiously, despite the sealing of these minutes, they were procured, apparently, by the news media, who have quoted them at length. See New York Post, February 4, 1977, at 8.) The result of this in camera inquiry by the Court was that juror Keno was immediately excused from the panel. I am also informed that criminal charges have since been brought against him for his conduct.

5. However, additional information recently has come to light which suggests that juror Keno's aforementioned contact with the relative of one defendant was not an isolated incident. Upon information and belief, I am informed that juror Keno was not alone when he approached Intersimone's sister, as recounted supra, but that he approached Intersimone's sister in the company of one other trial juror. While it is unclear at this juncture, whether or not this other trial juror was actually privy to the conversation at issue, there exists the substantial likelihood that this other juror, who was not subsequently excused from the panel, was well aware of what transpired between Keno and Intersimone's sister. I am further informed that Intersimone's sister has, in fact, already disclosed information to the Government which suggests that another juror may well have been involved with Keno. It is anticipated that this information will be addressed at greater length in defendant Intersimone's new trial motion, which his counsel, Paul Bergman, Esq., anticipates

filing in this Court next week.

6. Moreover, the conclusion that additional jurors may have been involved in, or, at least, were aware of, Keno's machinations, is reinforced by other incidents of similar conduct on Keno's part. I am informed that, upon at least one occasion, juror Keno approached the relative of yet another defendant in this case, seeking money for jurors other than himself. Should he, in fact, have made these other contacts, the fact that he approached Intersimone's sister while in the near-proximity of a fellow juror, whose company he had just left, casts grave suspicion upon the possible involvement of other trial jurors in this incident. Furthermore, even if no other jurors were actually involved, the likelihood that they may have learned of these incidents from their own observation or other sources, requires that this Court make further inquiry and compel the Government to disclose the extent of its knowledge, whether other jurors were involved in, or were aware of, any subornation attempts. In the event that either of these substantial possibilities eventuates, a new trial would be necessary.

7. Although this issue is developed at somewhat greater length in the accompanying Memorandum of Law, it suffices for the moment to point out that if any juror in this case learned that anyone associated with the defendants had been party to an attempt to obtain a corrupt result, perforce all defendants would have been prejudiced irretrievably in that factors outside the evidence would have tainted the very fairness of the proceedings themselves. Certainly, the jury's knowledge of this sort of information is no less inflammatory and prejudicial than newspaper publicity or other

prejudicial matters having no proper bearing upon the exercise of its functions, in properly evaluating the lawfully-admitted evidence, in deciding the defendants' guilt or innocence. Furthermore, irrespective of whether any jurors were aware of this incident, if any of them were actually involved, such corruption of the jury would automatically mandate a new trial.

8. Moreover, your deponent has received additional information suggesting that, besides the substantial possibility that the jury was tainted by the "Keno incident", their actual deliberations may well have been fatally flawed by the introduction, into these deliberations, of prejudicial and inflammatory information regarding the various defendants gained by several jurors from newspaper accounts published during the trial, which I am informed was brought to the attention of all the jurors during the deliberations. I have been advised by a private investigator that, prior to this Court's January 31, 1977 order precluding the interviewing of trial jurors, he had previously interviewed Ms. Isabelle Blau, a trial juror in this case. I have been informed that Ms. Blau stated to him, unequivocally, that during deliberation, at least two trial jurors had mentioned having read about this case, and various of the defendants, in Spanish-language newspapers during the trial. According to Ms. Blau, these jurors spoke to the other trial jurors of these media accounts during deliberations, referring to the defendants as having been bad people, as portrayed by these articles. According to Ms. Blau, these jurors referred to the characterizations of the defendants, as contained in these articles, in an attempt to convince the other

jurors to convict, based upon the contents of these news accounts. In light of this Court's recently-entered order, forbidding direct contact with any trial jurors, no attempt has, in fact, been made to contact juror Blau, nor any other jurors, in order to corroborate these facts. However, your deponent has contacted the investigator who had previously interviewed her, supra, and we shall provide the Court a supplemental affidavit, to be filed this coming week, in which the details of his interview will be directly forthcoming. Clearly, if, in fact, the trial jurors made reference to media accounts in their deliberations such inflammatory and prejudicial material dehors the record is more than sufficient to warrant vacatur of the jury's verdict upon the basis of improper extraneous influences fatally flavoring the deliberations based upon the admissible evidence.

9. Thus, the information sought by the discovery motion is critical to our motion for a new trial. The request for the sealed transcript of colloquy between the Court, the Government, and juror Keno, comprising seventeen pages of the trial record (Tr. 4177-4193); the complaint, and other proceedings presently pending against juror Keno (now sealed); the Brady request for information presently in the Government's possession tending to show, generally, that the "Keno incident" was not confined to a single juror; and the request to interview the jurors; all have, as their underlying thrust, the need to assure that the defendant's unconditional right to a fair trial by twelve impartial jurors has not been vitiated by any juror's participation in, or knowledge of, matters outside the record

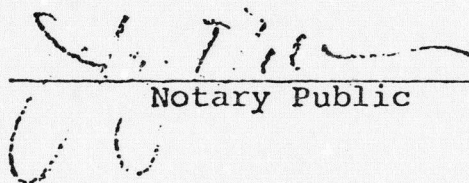
reflecting on a possible attempt to influence the verdict in this case. Clearly, in light of this Court's January 31, 1977 order restricting counsel's access to the trial jurors, as well as the fact that purportedly sealed trial minutes have already been quoted at length in the news media, fundamental fairness dictates that the facts already adduced by the Court regarding possible juror misconduct warrant that these discovery requests be granted.

10. Finally, we seek leave to interview the jurors, other than juror Keno, who deliberated in the above-entitled action, pursuant to the procedure recommended by the American Bar Association Project on Standards for Criminal Justice, The Defense Function, §7.3, and Trial by Jury, §5.7. In light of the serious allegations of one trial juror that prejudicial media accounts were read by certain jurors and were brought to the attention of other jurors during deliberations, it is critical to the proper resolution of this issue that counsel be permitted to make further inquiry regarding possible juror misconduct during deliberations.

WHEREFORE, your deponent prays that the relief
sought herein be granted.


Ivan S. Fisher

Sworn to before me this
18th day of February, 1977.


Notary Public

JEFFREY D. ULLMAN
Notary Public, State of New York
No. 24-4623543
Qualified in Kings County 77
Commission Expires March 30, 19.....

"B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

76 CR 324 (RO)

-against- :

SEBASTIAN INTERSIMONE, et al., :

AFFIDAVIT

Defendants. :
-----X

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

RICHARD J. MALINE, being duly sworn, deposes and says:

1. I am a licensed private investigator employed by the defendant herein, Sebastian Intersimone.

2. On Friday, January 14, 1977 I met with Mrs. Isa Blau, the forelady of the jury in the case of United States v. Alvarez, et al., 76 CR 324 (RO). That meeting took place at the law offices of Paul B. Bergman, Mr. Intersimone's attorney. Present also at that meeting, in addition to myself, Mrs. Blau, Mr. Bergman, were John McNally, a licensed private investigator also employed by Mr. Intersimone, and Mr. Earl Scott, a friend of Mrs. Blau's. A tape recording of that meeting was made and I have annexed hereto a copy of that tape as Exhibit A.

3. Subsequent to that meeting on the 14th of January I met again with Mrs. Blau on January 29 at her apartment in Manhattan. We were alone at that time. On that occasion Mrs. Blau prepared a handwritten statement concerning the matters which were discussed on the 14th. I have annexed hereto as Exhibit A a copy of that statement as well as a second page supplement

prepared about two weeks later.

4. On February 22, 1977, I met once again with Mrs. Blau at her apartment. I had with me a typed affidavit embodying some of the statements she had previously given to me on the 29th of January. From her apartment we went to a local bank where she signed the affidavit before a notary public. The original of that affidavit is annexed hereto as Exhibit C.

Richard J. Maline

Sworn to before me this
day of March, 1977.

D.H. 22 7
January 29, 1977

This is a statement made of my own free will. Herein are contained certain facts which I believe should be brought to the attention of the court.

Juror #10 and 2 other jurors of Puerto Rican or Latin extraction which I know to be juror #2 and believe to be juror #8 were seen together frequently during lunch recess particularly in front of the courthouse. They seemed to enjoy the rapport which I believe continued up until juror #10 was dismissed. After this incident, it seemed to me that the two aforementioned remaining jurors' relationship dissolved. x

During the deliberation, jurors #2 and 8 were outrageously vigorous in favor of Bernard Brightman's conviction which was in contrast to their attitude concerning other defendants who they were in favor of convicting.

Statements above were observations made by me and it is my opinion that if other jurors who sat on this panel were interviewed, they would concur with my observations.

B4

Yours Truly,
Isabelle Blum

see page 2 for additional statements

Page 2

During the deliberations juror # 2 & 8 told the panel they had read newspaper articles which convinced them that a certain defendant on trial was guilty.

Also during the trial, juror # 2 expressed anti-semitic sentiments which made it apparent to me that his judgements could or would be biased.

In closing, I repeat that in my opinion others of the jury would agree with my observations if they were interviewed.

Yours Truly,
Isabelle Blum

85
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

THE UNITED STATES OF AMERICA
-v-

JUAN ANTONIA ALVAREZ, et al.

Defendants. :
-----X

AFFIDAVIT

76 CR 324 (RO)

STATE OF NEW YORK)

COUNTY OF NEW YORK)

ss.:

Isabelle Blau, being duly sworn, deposes and says:

1. This is a statement made of my own free will.

Herein are contained certain facts which I believe should be brought to the attention of the Court. During the trial, before juror number 10 was dismissed, he was frequently seen in the company of juror number 2 and I believe juror number 8, both of whom came from Puerto Rico. This usually occurred during the lunch recess in front of the courthouse. The three jurors seemed to enjoy a rapport. After juror number 10 was dismissed it seemed to me that the two mentioned remaining jurors' relationship dissolved.

2. During the deliberations, juror number 2 and number 8 were outrageously vigorous in favor of Bernard Brightman's conviction which was in contrast to their attitudes concerning other defendants who they were in favor of convicting.

3. Statements above were observations made by me and it is my opinion that if other jurors who sat on this panel were interviewed, they would concur with my observations.

Isabelle Blau
ISABELLE BLAU

Sworn to before me this

22 day of February, 1977

SOL SCHWARTZ
Notary Public, State of New York
No. 24-4567274
Qualified in Kings County
Commission Expires March 30, 1977

Sol Schwartz
Notary Public

87
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,

AFFIDAVIT

- against -

76 Cr. 324 (R.O.)

SEBASTIAN INTERSIMONE,

Defendant.

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

DAVID V. KEEGAN, being duly sworn, deposes and says:

1. I make this affidavit in support of the defendant Sebastian Intersimone's motion for a new trial.

2. As the Court knows, I represented Intersimone at the trial.

3. On Friday, September 17th, 1976, at approximately 1:00 P.M., I left Court with Mr. Intersimone and his sister Yolanda, who had been in Court approximately three days per week during the trial. We walked to 299 Broadway where Mr. Intersimone's brother-in-law Anthony Sutura has a law office. Mr. Intersimone and I frequently ate lunch there during the early stages of the trial and discussed the progress of the case with Mr. Sutura.

4. On September 17th, we went there to discuss some aspect of the case before parting for the weekend. I do not believe we had, or planned to have, lunch, as Court had recessed for the day. When we arrived at 299 Broadway, Ms. Intersimone went to have some coffee or do some shopping. She never accompanied us to Mr. Sutura's office because she

38
apparently suffered from claustrophobia and could not ride the elevator. Since the office was on the 13th floor, it would have been inconvenient for her to walk up.

5. After discussing the case for approximately 45 minutes, we prepared to return to the lobby to meet Ms.

Intersimone. Mr. Intersimone had complained about gastritis and I believe that when Mr. Sutera and I started down, Mr. Intersimone was still in the men's room.

6. We left the building to stand outside and wait for Mr. Intersimone. Ms. Intersimone came up to us and it was apparent to me that she was excited. She spoke first with Mr. Sutera, at my suggestion, and then spoke to me. She told me that juror number 10 had just spoken to her and asked if she were "Mr. B's wife." She had responded "No, I'm Benny's sister." The juror then said, "It doesn't matter. I have a message for Mr. B." She said, "My God, you're a juror, don't you know we are not supposed to be talking, this is very dangerous." He said, "O.K., I'll get the message to him myself."

7. Before Mr. Intersimone arrived, I told both Ms. Intersimone and Mr. Sutera that I would have to inform the Court of this conversation first thing Monday morning. I told both of them not to mention the matter to Mr. Intersimone, because I was afraid that he would drink so much if he knew, that he would be unable to attend Court on Monday. Shortly after I said that, Mr. Intersimone came out of the building and joined us. We spoke for a couple of minutes, then Mr. and Ms. Intersimone proceeded north on Broadway, I proceeded

south and Mr. Sutura went back to his office, as far as I know. I went home or to my office in Long Island. I did not speak about this event to Mr. Intersimone over the weekend in fact, I don't believe I spoke to Mr. Intersimone that weekend at all.

8. On Monday, September 20th, 1976, shortly before Court resumed at approximately 9:30 A.M., I informed Mr. Intersimone of the conduct of juror number 10 on the previous Friday. Immediately following that conversation, I informed the Court of the incident as well.

9. The Court requested that Ms. Intersimone come to Court so that she could tell the Court in person precisely what happened. I do not recall if I got her on the telephone or not, but I believe I did not. She did eventually arrive at Court at approximately 10:30 or later. She told the Court what she had previously told me. Keno then gave his version of the meeting, complete with his most unconvincing explanation as to why he believed "Mr. B" wanted to see him. He was excused from further jury duty. While Keno was talking to the Court, Ms. Intersimone remembered a portion of Keno's statement she had not previously recalled. She then informed the Court in my presence that Keno had said "Tell Mr. B to meet me Monday at the noon hour on Broadway" or words to that effect.

10. I had informed the prosecutor Daniel Beller that according to Ms. Intersimone, juror number 10 was not alone at the time he spoke to her. As I understood it, he had been speaking with another juror, left that juror to talk to Ms. Intersimone, and then rejoined that other juror and

both left the area together. Mr. Beller was quite anxious to determine the identity of the other juror for obvious reasons, and I inquired of Ms. Intersimone on his behalf. Ms. Intersimone felt she could not say positively which juror had been with Keno, but she believed that it was one of the Hispanic jurors, either number 2 or number 8. When pressed by me, Ms. Intersimone finally decided she was unable to positively identify the person who had been with Keno and rather than identify the wrong person, she said she could not identify the other person. I reported this to Mr. Beller by telephone and there the matter was dropped.

Sworn to before me this
8th day of March, 1977.

David V. Keegan
DAVID V. KEEGAN

Andrea Riva Gianfelice
Notary

ANDREA RIVA GIANFELICE
NOTARY PUBLIC, State of New York
No. 4623565
Qualified in Nassau County
Commission Expires March 31, 1978

"C"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

AFFIDAVIT

FRANK MOTEN and
SEBASTIAN INTERSIMONE,

76 Cr. 324(RD)

Defendants.

STATE OF NEW YORK
COUNTY OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK

DANIEL J. BELLER, being duly sworn, deposes and says: during trial, I am an Assistant United States Attorney in

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and as such I am familiar with the facts of the above captioned case. I make this affidavit in opposition to the defendants motions for a post-trial interrogation of the jury in the trial of United States v. Alvarez, et al., 76 Cr. 324.

2. On Friday, March 18, 1977, I visited the offices of El Diario, located at 181 Hudson Street, New York, New York, accompanied by my student assistant, Ms. Jane Jablons, and Mrs. Margarita Cartagena, a qualified Spanish interpreter.

3. El Diario, also known as El Diario-La Prensa, is a Spanish language newspaper published six days each week, except Saturday, in New York City. Upon information and belief it is the only significant Spanish language newspaper in New York, and is the newspaper referred to by persons referring to the Spanish newspapers. I wished to review certain editions of the newspaper in connection with the motions made in this case.

03-1917

4. The claim which prompted my review of the newspaper was that two Spanish jurors had read articles in the Spanish newspapers about Juan Antonio Alvarez. Since I knew that the court had inquired of the jurors when they were selected whether any juror had read anything in the newspaper about the case, and no juror responded affirmatively; and I further knew that defense counsel had been satisfied with that response, since none of the twenty-two defense counsel asked for further questioning, I concluded that if an article had been read by a juror it would have been during trial. Since the trial commenced on August 10, 1976 and concluded in November 14, 1976, all newspapers from August 9 to November 16 were reviewed by Mrs. Cartagena, Ms. Jablons and myself.* We found one article, dated August 15, 1977, attached herein as Exhibit "B", and a translation of which is attached as Exhibit "D". Since I believed there may also have been an article published in connection with the arrests, we reviewed the newspapers from April 21 through April 30, 1976. We found one article, on April 23, 1976, attached herein as Exhibit "A", and a translation of which is attached as Exhibit "C".

NEW YORK

SS

DANIEL J. BELLER
Assistant United States Attorney

Sworn to before me this

day of March, 1977.

* El Diario maintains no name or subject index, or to my knowledge, any index whatsoever. Therefore, editions for each day were reviewed in their entirety with the exceptions of the paper of August 31, 1976, which was not available.

EXHIBIT "A"

EL DIARIO LA PRENSA, Viernes, 23 de Abril de 1976

LA PRENSA
 VIERNES, 23 de Abril de 1976

Nombre del votante.....
 Número del votante.....
 Dirección.....
 Estado..... Zip Code.....

EASTERN
LAS ALAS DEL HOMBRE

Los cupones de votación deben de dirigirse a: **EL DIARIO LA PRENSA, Concurso Reina 1976**
 181 Hudson St. New York 10013 NY
 Este cupon caduca el día 9 de Mayo de 1976

Arrestan Otro Sospechoso En Asesinato Jovencita PR

MAYAGUEZ (AP) - Un segundo sospechoso fue detenido ayer tarde en relación con el asesinato de una joven estudiante de escuela superior de mayagüez, cuyo cuerpo fue encontrado en diciembre pasado con un balazo en la cabeza en un apartado lugar del Barrio Atalaya, de Rincón.

La Policía dió a conocer que el obrero agrícola Víctor Manuel Fajardo Miranda, de 29 años de edad, de la Urbanización Pública Candelaria, fue acusado ayer de la muerte de Mirna Socorro Martínez Guerra, dijo la Policía.

Otro detenido, Daniel Vélez Vélez fue detenido y acusado en relación con el mismo caso, según el Comandante Lugo Sepúlveda, Jefe del NIC en el Oeste.

Fajardo Miranda, comocido también por "Pachanga" y "Papo Sangre", fue ingresado en la Cárcel Del Limón de Mayagüez con una fianza de 50 mil dólares impuesta por el Juez de Paz Miguel A. Talavera.

Un vocero del Negociado de Investigaciones Criminales en Mayagüez dijo que el Comandante Lugo Sepúlveda no había dado a conocer el nombre del segundo sospechoso ayer en la mañana "por temor a que éste saliera la Isla".

Se supo que una tercera persona, que aún no ha sido identificada por la Policía, presuntamente participó en el asesinato, pero se dijo que "se le ofreció inmunidad como testigo del pueblo".

La estudiante de la escuela Hostos fue asesinada el primero de diciembre.

Culpan 33 Por Tráfico Drogas \$600 Millones

Por Mike A Correa

Once de las 33 personas encausadas de cargos por conspiración para "importar, distribuir y traficar" cocaína y heroína valorada en más de \$600 millones de dólares, fueron instruidas de los cargos ante la Corte Federal de Manhattan ayer por la tarde.

Ante el Juez Charles Bricant, los detenidos aquí en Nueva York y en Nueva Jersey fueron identificados como Juan Antonio Alvarez, de 43 años, natural de

España, a quien le "acreditan la operación y lo identifican como el importador oficial en el movimiento".

Segundo en la lista local figuran Frank Moton, de 59 años, vecino de Nueva Jersey, a quien apodan "Tio", Sebastián John Intersore de 54 años, también de Nueva Jersey, Rafael Bonilla de 34 años, a quien apodan "Michael el Español", Ann Reynolds del 1375 de la Avenida Nelson en

(Pasa a la pagina 7)

Nine Somete Plan a Favor Colegio de H

Por Luisa A. Quintero

El Asambleísta Luis Nine, del Sur del Bronx, presentó un

para mantener el Colegio Eugenio María de Hostos abierto,

Un panel de expertos de la Ley Electoral del Estado de Nueva York demandar inmunidad o de lo contrario perdería su puesto.

Los tres jueces estuvieron de acuerdo en lo que describieron como una "estrecha cuestión constitucional", que la Sección 22 violó los derechos de Cunningham a alegar la Quinta Enmienda, al privarle de protección contra posible incriminación personal.

No obstante, el tribunal declaró que posiblemente Cunningham se vea obligado a declarar, "so pena de sufrir encarcelamiento o multa por rehusar testificar si se le concede inmunidad contra procesamiento".

Al escribir la opinión, el Juez (Pasa a la pagina 7)

Exp
Cub

LISBOA
bomba hizo
oficinas de
en esta
muerto, va
daños en
diplomática
Un voce
que la expl



DEMANDAN EMPLEOS PROPORCIONAL

Un grupo de vecinos de Bushwick, Brooklyn, encabezados por el concejal Luis A. Olmedo, llevó a cabo una demostración de protesta en la Corporación Comunal de Bushwick, 1420 Bushwick Avenue, en ese Condado, pero no quieren darle empleos a los boricuños habiendo plazas vacantes. Dicen que otros g

Comité Estatal Hoy Oficiales y

El Comité Estatal Demócrata delegados elige hoy, viernes 23, oficiales y mulación p

"porque es un centro de enseñanza superior muy necesario para las minorías, especialmente para

Comité de
así como
Carey y a

GUERRILLEROS (UPI). El "Montonero" "Montoneros" "cientos al ala izquierda" "rrocado peronismo, anun-
lanzamiento de una ofensi-
ntra el gobierno militar
tino instalado hace casi un

En comunicado, el grupo re-
advirtió que "el pueblo
su resistencia desde los
s, las fábricas y las ofici-
acciones colectivas e in-
ales de sabotaje y la per-
te presencia del Ejército
nero y las Milicias Monton-

ces...
(CONTINUACION)
s Kennedy, del Tribunal
al de Distrito, dijo que "al-
ar el estatuto que castigar-
unningham por el ejercicio
derechos constitucionales
ndonan corrupción en un
público en caso que exis-
que se probara la tal cor-

opinión concurrente, el
Presidente Irving R. Kauf-
del Tribunal Federal de A-
iones, dijo: "Nuestra deci-
no ordena en modo alguno
e le permita a Cunningham,
nos que el representa, que
anezca en su cargo o que
elegido a sus puestos en el
do Demócrata".
unningham, que es también
residente del Comité de
ado del Bronx, compareció
el actual ante un Gran Jura-
pecial en el Bronx en una de-
stas de los casos señalados
el Procurador Maurice Nad-
respecto a alegaciones de
s de puestos judiciales en el
N. Cunningham rehusó fir-
un acta de inmunidad y no
terrogado.

sa oportunidad, Cunning-
se enfrentó a una posible
ción automática como
ente de ambos Comités,
apeló y ganó una prórroga
oral contra la ley, victoria
ahora permanente.
Estado" dijo Kaufman "no
e coaccionar a Cunningham
apoyar cargos en su contra
propia boca".
nningham fue reelegido-el
como Presidente del
de del Condado del Bronx y
viernes, espera ser reelegi-
mo Presidente del Comité
tal. Está luchando desde
ados del pasado diciembre
ra la citación obtenida por
jari en su contra para
parecer ante el Gran Jurado.
l período de Nadjari como
curador Estatal Especial
ra el 30 de junio próximo.

Explosión...
(CONTINUACION)
cuarto piso, cubriendo las
es con pedazos de vidrios.
la violencia de la explosión
jó a todos al suelo. Fue terri-
dijo un empleado que
raba en el cuarto piso. "Vi a
as personas abandonar el
cio totalmente cubiertas de
re", agregó.
bomba hizo explosión en el
cio ubicado en el centro de la
Jad poco después que el per-
al de la embajada regresó al

eras que conducen a una resisten-
cia, para la construcción de una
Patria justa, libre y soberana".
En el comunicado, que fue
dejado en el lavatorio de un café
céntrico, los Montoneros se atri-
buyeron por otra parte un atenta-
do perpetrado anteayer contra
un dirigente del gremio telefóni-
co y su esposa.

Culpan 33...

(CONTINUACION)

el Bronx, Charles Cowpers de 40
años, del 2237 de la Segunda Ave-
nida en "El Barrio", Helen Kel-
len de 23 años, del 157 al oeste de
la calle 123 y su novia Miriam
Dumward de la misma edad y la
misma dirección y Thomas
Davis, también de Nueva Jersey,
además de Albert Lee Jones de
44 años, residente en el 2300 de la
Quinta Avenida. Bonilla reside
en el 364 oeste de la calle 18 en el
vecindario "Chelsea" de Man-
hattan.

La agencia federal "DEA"
(Drug Enforcement Agency), de-
signó a docenas de sus agentes a
efectuar las redadas ayer por la

"ajusticiado" a Carlos Farinatti,
a quien acusaron de ser infor-
mante del Servicio Oficial de
Inteligencia.

La organización guerrillera
pareció no haberse enterado de
que Farinatti y su esposa, heri-
dos en el umbral de su casa de
Buenos Aires, seguían con vida y

madrugada equipados con or-
denes de allanamiento y arresto
firmadas por un juez federal del
Distrito.

A las mismas horas de la ma-
drugada, "aproximadamente",
los detectives federales "visita-
ron" a los sospechosos en la zona
metropolitana de Nueva York,
Chicago, Illinois, Miami, Flori-
da, Filadelfia y Pittsburgh,
Pennsylvania y otros estados
límites.

De las 35 personas arrestadas
los números mayores fueron en
Nueva York y Miami, Florida,
según dijeron los supervisores y
fiscales en el caso, John P. Co-
oney y Daniel J. Beller.

Angel Rodriguez de 53 años y
vecino de Miami y José Sureda
de 50 años.

Medios de prensa recibieron
recientemente un comunicado
del proscribo Partido Auténtico,
virtual brazo político de los Mon-
toneros, el cual tildó de "reaccio-
nario" al nuevo gobierno y tam-
bién dijo que estaba dirigiendo
un movimiento de resistencia.
Aquel comunicado, empero, no
aclaró si la resistencia era de ca-
rácter armada o política.

BAHIA TRAVE

Anuncia la iniciación de

EXCURSION

DE FIN DE SEM

CATARATAS DEL NIAGARA \$4995

Para completa inf

llamar al TELEFON
o visitenos en el: 81-34 BAXTER AVE



El Diario-La Prensa
Friday April 23, 197

33 Accused of \$600 Million Drug Trafficking
By Mike A. Correa

Eleven of the 33 persons accused of charges of conspiracy for "importing, distributing and trafficking" with cocaine and heroin valued at more than \$600 million dollars were informed of the charges before the Manhattan federal court yesterday afternoon.

Before Judge Charles Brieant, the detained here in New York and New Jersey were identified as Juan Antonio Alvarez, 43 years old, from Spain, who is "given credit for the operation and is identified as the official importer in the movement".

Second on the local list appears Frank Moton, 59 years old resident of New Jersey who is nicknamed "Tio" (translation-uncle), Sebastien John Intersore, 54 years old, also from New Jersey, Rafael Bonilla, 34 year old, who is nicknamed "Michael El Espanol", Ann Reynolds of 1375 75th of Nelson Avenue in the Bronx, Charles Cowpers, 40 years old of 2237 2nd Avenue in "El Barrio", Helen Kellen, 23 years old of 157 West of 123d Street and his girlfriend Miriam Dumward of the same age and address and Thomas Davis, also of New Jersey and also Albert Lee Jones, 44 years old residing in 2300 of Fifth Avenue. Bonilla resides in 364 West of 18th Street in "Chelsea" neighborhood of Manhattan.

The federal agency "DEA" (Drug Enforcement Agency), designated dozens of its agents to carry out the raids yesterday in the early hours of the morning equipped with search warrants and arrest warrants signed by a district federal judge.

At "approximately" the same time in the morning the federal detectives "visited" suspects in the Metropolitan area of New York, Chicago, Illinois, Miami, Florida, Philadelphia, Pittsburgh, Pennsylvania and other bordering states.

According to what was said by the supervisors and prosecutors in the case, John P. Cooney and Daniel J. Beller of the 35 persons arrested the greater majority were in New York and Miami, Florida.

Angel Rodrigue~~s~~, 53 years old and resident of Miami and Jose Sureda 50 years old.

man For a tiene

a La Nominación

Información en pag. 3

El DIARIO 8/15/76 p. 1

Culpan a 22 De Vender \$200 Millones Drogas

Procuradores en la Corte Federal de Manhattan en el juicio contra 19 hombres y tres mujeres acusados de traficar heroína y cocaína valoradas en mas de 200 millones de dólares, declararon el viernes tener evidencia suficiente.

Los abogados defensores, por otra parte, declararon que la fiscalía cuenta con muy poca evidencia la cual está basada en información recibida de parte de "piratas y ratas en el caso".

El primer sospechoso, Juan Antonio Alvarez de 43 años y residente en Miami, escapó de Nueva York después que salió libre al prestar fianza montante a medio millón de dólares.

Alvarez ha estado ausente del juicio, pero las autoridades aun esperan que se presente. El hombre está siendo representado por su abogado defensor. Alvarez está siendo juzgado en ausencia.

La agencia federal a cargo de la pesquisa describió el arresto como el más importante en la nación de traficantes de narcóticos.

El Fiscal Federal Lic., Thomas H. Sear, dijo al jurado de ocho hombres y cuatro mujeres que los acusados están envueltos en el negocio del tráfico de narcóticos en los Estados Unidos desde hace años.

Su campo de operación era toda la costa este, incluyendo a Boston, Miami y extendiéndose hasta Chicago. Los narcóticos eran importados de Sur América, particularmente de Colombia.

Entre los abogados defensores de los 22 acusados figuran la licenciada Nancy Rosner y el licenciado Theodore Krieger quienes alegan que las declaraciones de Sear son solamente una historia en busca de publicidad.



Naciones Unidas, en la primera Avenida y la calle 41. Minutos después llegó al lugar el Secretario de Estado, Henry Kissinger. (Foto AP)

EXHIBIT "D"

C9

El Diario-La Prensa
New York - Sunday August 15, 1976

22 Accused of Selling \$200 Million Drugs

Prosecutors in the Manhattan Federal Court in the trial against 19 men and three women accused of trafficking heroin and cocaine valued at more than 200 million dollars stated Friday that they had sufficient evidence.

On the other hand the defense attorneys stated that the prosecutors rely on very little evidence which is based on information received from "pirates and rats in the case".

The prime suspect, Juan Antonio Alvarez 43 years old and resident of Miami, escaped New York after he was let out on a half million dollar bail.

Alvarez has been absent at the trial; but the authorities still expect him to appear. The man is being respresented by his defense attorney. Alvarez is being tried in absentia.

The federal agency in charge of the arrest described it as the most important arrest in the nation of drug traffickers.

The A.U.S.A. Thomas H. Sear told the jury of 8 men and 4 women that the defendants have been involved in the business of drug traffic in the United States for many years.

Their operation ground was the entire Eastern Coast including Boston, Miami and extending as far as Chicago. The narcotics were imported from south America, especially from Colombia.

Among the defense attorneys of the 22 defendants are Attorney Nancy Rosner and Attorney Theodore Krieger who allege that Sear's statements are only stories in search for publicity.

"D"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA	:	
	:	76 Cr. 324
-v-	:	
	:	<u>MEMORANDUM AND ORDER</u>
FRANK MOTEN and	:	
SEBASTIAN INTERSIMONE,	:	
	:	
Defendants.	:	
	:	

-----X

OWEN, District Judge

Defendants Intersimone and Moten have made post-trial motions seeking leave to interview the trial jurors about their knowledge concerning the dismissed juror number 10 during trial.⁽¹⁾ In addition, Moten seeks to interview

(1)

This is the second motion by Intersimone. When Intersimone was sentenced by me on January 31, 1977, I denied certain post-trial motions made on his behalf. Among them was a motion for an order disclosing the names and addresses of all the trial jurors so that Intersimone's then attorney, Paul Bergman, could interview the jurors as to any knowledge of the circumstances surrounding the removal during trial of juror number 10, one William T. Keno, or any involvement with him in possible attempts to corrupt the jury. Keno was dismissed because, inter alia, it was brought to my attention by Intersimone's trial counsel, David Keegan, that Keno approached Intersimone's sister and told her he had a message for Intersimone. For a fuller account see In re a Grand Jury Subpoena Served Upon David Doe, Nos. 77-1047&1059, slip op. 2403 (2d Cir. Mar. 17, 1977). I denied that motion for failure to make a showing that any other jurors were affected and I entered an order applicable to all counsel prohibiting the interrogation of jurors without prior application to me on an appropriate showing.

the trial jurors concerning allegations that during deliberations the jury was exposed to prejudicial information about "certain of the defendants," allegedly as a result of certain jurors having read newspaper articles, the contents of which were reported by them to the rest of the jury. (2)

There is before me (1) a tape recording of an unsworn post-trial interview of the forelady of the jury, Ms. Isabelle Blau, conducted by one Richard Maline, a licensed private investigator retained by Mr. Bergman; (3)

(2)

As to the other unresolved requests of Moten, I have reviewed, as I indicated on the oral argument of the instant motions that I would, the complaint and other sealed documents submitted to me by the government pertaining to a pending criminal prosecution in this district entitled United States v. William T. Keno. I find nothing helpful to Moten since I give no credence to rumors allegedly afloat among unidentified prisoners in the Metropolitan Correctional Center. His request number 3 is accordingly denied.

(3)

The interview took place on January 14, 1977 at Mr. Bergman's law offices in Bergman's presence. Neither Bergman nor juror Blau knew at the time that the interview was being recorded.

13

(2) a two page unsworn, handwritten statement by Ms. Blau; (3) an inconsequential affidavit by Ms. Blau; (4) an affidavit by investigator Maline that does no more than provide a chronology for the Blau submissions; and (5) hearsay affidavits by Intersimone's trial attorney, David Keegan, and Moten's appellate attorney, Ivan Fisher.

Keno and the jury

The only basis for urging upon me an inquiry into the issue of whether the jury that convicted Intersimone and Moten were aware of the reasons for Keno's dismissal from the jury, or whether another jury member may have been complicit with Keno or independently involved in an attempt to corrupt the jury process, is in the form of sheer hearsay affidavits made by counsel relating what they were told by certain others. There are no affidavits by those "others" although they were clearly within the reach and control of counsel. Such a hearsay showing is insufficient to

the trial jurors concerning allegations that during deliberations the jury was exposed to prejudicial information about "certain of the defendants," allegedly as a result of certain jurors having read newspaper articles, the contents of which were reported by them to the rest of the jury. (2)

There is before me (1) a tape recording of an unsworn post-trial interview of the forelady of the jury, Ms. Isabelle Blau, conducted by one Richard Maline, a licensed private investigator retained by Mr. Bergman; (3)

(2)

As to the other unresolved requests of Moten, I have reviewed, as I indicated on the oral argument of the instant motions that I would, the complaint and other sealed documents submitted to me by the government pertaining to a pending criminal prosecution in this district entitled United States v. William T. Keno. I find nothing helpful to Moten since I give no credence to rumors allegedly afloat among unidentified prisoners in the Metropolitan Correctional Center. His request number 3 is accordingly denied.

(3)

The interview took place on January 14, 1977 at Mr. Bergman's law offices in Bergman's presence. Neither Bergman nor juror Blau knew at the time that the interview was being recorded.

2

D3

(2) a two page unsworn, handwritten statement by Ms. Blau; (3) an inconsequential affidavit by Ms. Blau; (4) an affidavit by investigator Maline that does no more than provide a chronology for the Blau submissions; and (5) hearsay affidavits by Intersimone's trial attorney, David Keegan, and Moten's appellate attorney, Ivan Fisher.

Keno and the jury

The only basis for urging upon me an inquiry into the issue of whether the jury that convicted Intersimone and Moten were aware of the reasons for Keno's dismissal from the jury, or whether another jury member may have been complicit with Keno or independently involved in an attempt to corrupt the jury process, is in the form of sheer hearsay affidavits made by counsel relating what they were told by certain others. There are no affidavits by those "others" although they were clearly within the reach and control of counsel. Such a hearsay showing is insufficient to

D4

call for a hearing.⁽⁴⁾ See United States v. Allied Stevedoring Corp., 258 F.2d 104, 105-06 (2d Cir.), cert. denied, 358 U.S. 841 (1958). The motions by Moten and Intersimone for this relief are denied.

The prejudicial newspaper publicity claim

Fisher, Moten's attorney, states as hearsay based upon what he understood Ms. Blau to have told the investi-

(4)

Furthermore, while the Blau tape may not have the reliability of a sworn affidavit, it is not contended here that it is not her voice on the tape, and in that sense it is far more valuable than the clearly incompetent hearsay affidavits by Keegan and Fisher. The Blau tape clearly indicates that the reasons for Keno's dismissal were not a topic of speculation, conjecture or even discussion among the assembled jury. This may explain the obvious failure of Intersimone to even submit, let alone rely on, the Blau tape.

The only other ground for examining the jurors with respect to possible knowledge of the reasons for Keno's dismissal, or other possible attempts to corrupt the jury during the trial, is that I am now free to engage in a thorough, penetrating examination of each juror, while at the time I voir-dired the jury, after having dismissed Keno, it was necessary to be circumspect since the jury could have been prejudiced by the very asking of questions designed to learn whether any other jurors were tainted either by reason of association with Keno or otherwise. This argument has been made and already rejected at Intersimone's sentencing. See Transcript at 17-37. I reject that argument again. If defendants were dissatisfied with my examination of the jurors at the time, they had a duty to speak then. They could not "[g]amble on an acquittal while holding this issue in reserve." United States v. Gersh, 328 F.2d 460, 463 (2d Cir.), cert. denied, 377 U.S. 992 (1964).

gator, that two of the jurors mentioned during the jury's deliberations having read about the case in Spanish language newspapers that, according to Fisher, "referr[ed] to the defendants as having been bad people" (emphasis supplied), and that these same two jurors argued for conviction based on the characterizations in the alleged newspaper articles.

However, Fisher is in error. Page 2 of the handwritten Blau statement reveals that the comment was restricted to one defendant. It contains the following paragraph: "During the deliberations, jurors #2&8 told the panel they had read newspaper articles which convinced them that a certain defendant on trial was guilty" (emphasis supplied). Further, the unsworn Blau tape clearly shows that defendant Juan Alvarez⁽⁵⁾ was the only defendant mentioned by the two jurors as having been the subject of the Spanish language newspaper articles. Since no defense counsel, for obviously good reason, prepared a transcript of the relevant part of the Blau tape, I have prepared my own as to Ms. Blau's recital of the alleged exposure of the jury to prejudicial newspaper articles:

(5) Juan Alvarez was convicted in absentia, after forfeiting \$600,000 bail. His flight and the forfeiture of substantial properties were all duly proved on the trial as some evidence of guilty knowledge.

Q. Did any of the jurors ever indicate that they knew anything about the background of any of the defendants?

A. Well, the two Puerto Rican men in regard to ah, not Nelson, the other, Juan Alvarez, they had read Spanish newspapers. They knew all about him. And I said, "you mustn't read the newspapers," but they knew already. How hated, I mean they hated, you know, he was a bad, a black mark in their seed. And they really knew the whole story about ah Juan Alvarez, you see.

Q. They had told you this?

A. Oh yes, they would, you know.

Q. Did they indicate this to all the jurors?

A. Yes. That ah in the newspaper, ah, I guess in this newspaper we all know about him. You know, this and that and that and this.

Q. At what time did they say that, was this at the ah

A. Deliberation.

Q. During the deliberations?

A. Yes.

Q. Did they indicate that any of the other Spanish speaking ah defendants, that they had read anything about them?

A. No, it was ah mainly Juan Alvarez, and they knew all about him, yes.

Q. Have, did they say when they read these articles? During the trial?

A. Yes, ah I'm sure they were probably in the Spanish press quite ah quite frequently during the trial.

Q. They didn't like ah Juan Alvarez at all, huh?

A. Beg pardon?

- Q. They didn't like him at all.
 A. No. No, they wanted him to be found guilty. Otherwise they were very soft on ah his brother. They must have gotten a lot of the data from the paper you know . . . [unintelligible].

At best, the foregoing gives no support whatsoever to any motion by Moten for relief on this ground.

Further, the mere fact that a juror during deliberations may have expressed animosity toward and a desire to convict one of the defendants is not a basis for a new trial. As the Court stated in United States ex rel. Owen v. McMann, 435 F.2d 813, 818 (2d Cir. 1970), cert. denied, 402 U.S. 906 (1971), quoting from United States v. McKinney, 429 F.2d 1019, 1022-23 (5th Cir. 1970), cert. denied, 401 U.S. 922 (1971):

All must recognize, of course, that a complete sanitizing of the jury room is impossible. We cannot expunge from jury deliberations the subjective opinions of jurors, their additudinal expositions, or their philosophies. These involve the very human elements that constitute one of the strengths of our jury system, and we cannot and should not ex-communicate them from jury deliberations. Nevertheless, while the jury may leaven its deliberations with its wisdom and experience, in doing so it must not bring extra facts into the jury room. In every criminal case we must endeavor to see that jurors do not [corsider] in the confines of the jury room * * * specific facts about the specific defendant then on trial. * * * To the greatest extent possible all factual [material] must pass through the judicial sieve, where the fundamental guarantees of procedural law protect the rights of those accused of crime.

Thus, the critical question is whether there has been a sufficient showing made of the possibility that a juror discussed or brought specific extra-record facts into the juryroom with the "significant possibility that [a] defendant was prejudiced thereby." United States ex rel. Owen v. McMann, 435 F.2d at 818 n.5. A juror's statement as to the subjective effect upon him of a newspaper article, if any, is therefore of no consequence. One must look at the article to see if it put before him inappropriate extra-record facts. United States v. Green, 523 F.2d 229, 235 (2d Cir. 1975), cert. denied, 423 U.S. 1074 (1976).

Turning to the newspaper accounts themselves, if there was substance to these allegations of prejudice, one would have expected resourceful defense counsel to have found evidence of them, or at least have directly confronted the issue by stating that he has been unable to find any. In fact, it was the government that took the trouble of searching through back copies of El Diario, as to which it has made the uncontradicted assertion that "it is the only significant Spanish language newspaper in New York, and is the newspaper referred to by persons referring to the Spanish newspapers." The result of their search is two articles -- the first on April 23, 1976, at the time the indictment was returned, and the other on August 15, 1976,

the Sunday following the first week of trial, after opening statements had been made.⁽⁶⁾ As for the first article, I voir-dired each juror at the time of selection as to

(6)

El Diario-La Prensa
Friday April 23, 1976

33 Accused of \$600 Million Drug Trafficking
By Mike A. Correa

Eleven of the 33 persons accused of charges of conspiracy for "importing, distributing and trafficking" with cocaine and heroin valued at more than \$600 million dollars were informed of the charges before the Manhattan federal court yesterday afternoon.

Before Judge Charles Brieant, the detained here in New York and New Jersey were identified as Juan Antonio Alvarez, 43 years old, from Spain, who is "given credit for the operation and is identified as the official importer in the movement."

Second on the local list appears Frank Moten, 59 years old resident of New Jersey who is nicknamed "Tio" (translation-uncle), Sebastien John Intersore, 54 years old, also from New Jersey, Rafael Bonilla, 34 year old, who is nicknamed "Michael El Espanol," Ann Reynolds of 1375 Nelson Avenue in the Bronx, Charles Cowpers, 40 years old of 2237 2nd Avenue in "El Barrio," Helen Kellen, 23 years old of 157 West of 123d Street and his girlfriend Miriam Dunward of the same age and address and Thomas Davis, also of New Jersey and also Albert Lee Jones, 44 years old residing in 2300 of Fifth Avenue. Bonilla resides in 364 West of 18th Street in "Chelsea" neighborhood of Manhattan.

The federal agency "DEA" (Drug Enforcement Agency), designated dozens of its agents to carry out the raids yesterday in the early hours of the morning equipped with search warrants and arrest warrants signed by a district federal judge.

At "approximately" the same time in the morning

(6) (continued)

the federal detectives "visited" suspects in the Metropolitan area of New York, Chicago, Illinois, Miami, Florida, Philadelphia, Pittsburgh, Pennsylvania and other bordering states.

El Diario-La Prensa
New York - Sunday August 15, 1976
22 Accused of Selling \$200 Million Drugs

Prosecutors in the Manhattan Federal Court in the trial against 19 men and three women accused of trafficking heroin and cocaine valued at more than 200 million dollars stated Friday that they had sufficient evidence.

On the other hand the defense attorneys stated that the prosecutors rely on very little evidence which is based on information received from "pirates and rats in the case."

The prime suspect, Juan Antonio Alvarez, 43 years old and resident of Miami, escaped New York after he was let out on a half million dollar bail.

Alvarez has been absent at the trial; but the authorities still expect him to appear. The man is being represented by his defense attorney. Alvarez is being tried in absentia.

The federal agency in charge of the arrest described it as the most important arrest in the nation of drug traffickers.

The A.U.S.A. Thomas H. Sear told the jury of 8 men and 4 women that the defendants have been involved in the business of drug traffic in the United States for many years.

Their operation ground was the entire Eastern Coast including Boston, Miami and extending as far as Chicago. The narcotics were imported from south America, especially from Columbia.

Among the defense attorneys of the 22 defendants are Attorney Nancy Rosner and Attorney Theodore Krieger who allege that Sear's statements are only stories in search for publicity.

whether he or she had read any newspaper articles about the case. Their answers, to the apparent satisfaction of all counsel, was that they had not. (7) Also, assuming that juror number 2 or juror number 8 had seen it, the August 15, 1977 article does not support Moten's allegations of prejudice. The article reports that the conspiracy dealt in an enormous dollar amount, this time \$200 million worth, of heroin and cocaine, a fact while not put into direct evidence on the trial, was also not at significant variance with the amount the jury could find simply by using the evidence before it of street value of cut narcotics, the amount and purity of narcotics proved, and the degree to which it was established the narcotics would be cut before being distributed to the ultimate

(7)

The only information contained in this article that is arguably prejudicial to anyone other than Alvarez is the headline, declaring that the value of the narcotics involved in the alleged conspiracy was \$600 million. In addition, there appears to be an inaccurate description of a friendship between two co-defendants, one who was severed and against whom the indictment was ultimately nollied, and one who was acquitted on the trial. Although there was no direct evidence to the effect that the value of the narcotics involved was \$600 million, there was evidence before the jury about hundreds of kilos of cocaine and several kilos of pure heroin, as well as the value of cut and uncut narcotics and the degree to which the narcotics would be cut before distribution to the ultimate consumer. While the \$600 million amount may have been inaccurate, it is certainly within an order of magnitude of what the jury could conclude from the evidence before it and therefore not prejudicial.

consumer. The article also characterized Juan Alvarez as being the prime suspect, and informed that he "was let out on a half million dollar bail." I fail to see, however, even assuming that this constituted prejudice to Juan Alvarez,⁽⁸⁾ how this could constitute prejudice to any other defendant. Further it is the fact that Alvarez was tried in absentia, and as some evidence of guilt, evidence was presented to the jury that Alvarez, knowing of the trial date, jumped bail, and that the property posted as collateral for the bail bonds was of clearly substantive value.

Thus, on the basis of Marshall v. United States, 360 U.S. 310, 312 (1959), I hold that on the particular circumstances of this case, based on (1) the failure of Moten to bring to my attention any newspaper articles, prejudicial or not, in addition to those found by the government, and (2) the lack of prejudice to Moten in those articles uncovered by the government in light of (i) my voir dire of the jurors at the time of their selection, (ii) the overwhelming proof of the conspiracy found by the jury, and the complicity of those convicted, (iii) the fact that by their verdicts -- both the acquittal of some defendants on all charges,

(8)

Were the issue before me, I would find none.

and the acquittal of some, including Moten, on some but not all the charges -- the jury obviously individually considered the guilt of each defendant as to each count of the indictment, and (iv) the general accuracy of the two isolated newspaper reports, Moten has not made a showing that requires me to hold a hearing to voir-dire any of the jurors. United States v. Crosby, 294 F.2d 928, 948-50 (2d Cir. 1961), cert. denied, 368 U.S. 984 (1962); see United States ex rel. Owen v. McMann, 435 F.2d at 818 n.5. Moten's motion to be furnished the names and addresses of the jurors so that his attorney can interrogate the jurors himself on this ground is denied. : See United States v. Brasco, 516 U.S. 816, 819 n.4 (2d Cir.), cert. denied, 423 U.S. 860 (1975).

So Ordered.

June 30, 1977.



United States District Judge

1 djw

2

2 (In robing room. Messrs. Keegan, Beller, Sear. Ms. Cushman)

3 THE COURT: These minutes are to be sealed.

4 Mr. Keegan started to tell me about a matter involving
5 Juror number ten, a William T. Keno, Juror Number
6 134082. Now, go ahead, Mr. Keegan. Start from the
7 beginning if you will.

8 MR. KEEGAN: After court recessed on Friday,
9 at about one, I went over to Mr. Sutero's office, /
10 my client's brother-in-law's law office at 289
11 Broadway. While I was upstairs talking to my client
12 and his brother-in-law, his sister, Mr. Intersimone's
13 Yolanda, who has attended certain days in court, was
14 waiting downstairs. She doesn't ride the elevator,
15 didn't come upstairs with us. Juror number ten
16 when leaving approached her and asked her if she was
17 either Bennie or Mr. Intersimone's wife -- I don't
18 know what words he used, and she said, "No, I'm his
19 sister."

20 And he said, "Well, I have a message for Bennie."
21 And at that point she realized this was more than a
22 hello and good-bye, it was something more serious and
23 cut off the conversation with words to the effect,
24 "Oh, you're a juror. I can't talk to you." And he
25 said, "Okay, I'll get the message to Bennie on Monday."

djw

She told Mr. Sutero and I about this and I think her conduct was entirely proper. But there was an earlier confidential communication by my client to me concerning Bernard Brightman, another defendant on trial, who had approached my client and said that there was a possibility of reaching one of the jurors.

I think my client's response at that point was inappropriate. He told me about it and I told him in no uncertain terms to go back and tell Bernie Brightman that you want no part of this at all. That's the extent of my knowledge, but the second incident would not have seemed as serious to me except for the first confidential communication.

I've told Mr. Beller all this so he can take whatever course of action he deems appropriate. My problem is that I think at some point prior to the jury getting the case Mr. Xeno should be excused as a juror because I feel that if an approach were made on behalf of my client or using my client's name which never came to fruition this juror will definitely vote guilty on all counts against my client to show that he has done nothing improper, had no improper communications. I'm not pressing for him to be excused at this moment because the

1 djw

2 Government may wish to leave things as they are
3 to further its own investigation of the facts.

4 THE COURT: It seems to me just on what you
5 tell me it's inappropriate to have a juror who has
6 attempted to communicate with a defendant, period.

7 MR. KEEGAN: I don't think he would be in a
8 position to reveal this to the other jurors in any
9 way to influence their deliberations which have not
10 yet begun. I would certainly want him excused prior
11 to the jury getting the case.

12 THE COURT: This doesn't show that impartial
13 state of mind.

14 MR. KEEGAN: No, he doesn't have an impartial
15 state of mind but if they adhere to your honor's
16 instructions they are not presently discussing the
17 facts in the case, and for that reason I'd like to
18 leave things as they are for the moment and then at
19 some point excuse him saying that he's ill and just
20 handle it that way. The Government may have some
21 other reasons for wanting to keep status quo because
22 they may wish to investigate.

23 MR. BELLER: Your Honor, there are some things
24 I want to tell you but I really have to do that in
25 camera and I wonder if maybe Mr. Keegan might want

1 djw

2 to leave.

3 (Mr. Keegan left the robing room)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

"F"

9/28/76

dws

4194

(In the courtroom; jury not present at
12:30 p.m.)

THE COURT: Now, at the beginning of the morning it was brought to my attention that there was a possible attempt by a juror to approach a defendant in this case to get a message to that defendant. I have held a brief hearing on that subject and have confirmed that it is entirely possible that that may have occurred, although I make no finding to that effect.

I have excused that juror. It is Juror No. 10. It was also brought to my attention, rather, information was brought to my attention that one defendant in this case spoke to another defendant in this case about the possibility of reaching a juror. Now, in that premise I propose to inquire on each of the remaining jurors, regular and alternate, separately in my robing room without counsel, to ascertain -- I will do this on the record -- to ascertain whether any information is forthcoming that would be suggested by this information that I have received.

I have in mind to ask each juror or alternate roughly as follows, to tell each juror that I had instructed the jury generally at the beginning of the trial they were to speak to no one about the case. They were not to

ws2

1 discuss the case amongst themselves or with anybody else.
2
3 And with that as a prelude to ask two questions.

4 One, whether anyone has spoken to that
5 particular juror or try to speak with that particular juror
6 about the case in any way at all.

7 Two, whether the jury has in fact spoken amongst
8 itself in any way as to the merits of the case that is
9 before it.

10 Now, I invite suggestions from counsel before
11 me as to whether they disapprove of the procedure I have
12 in mind or of the two questions I propose to ask, keeping
13 in mind I obviously have a duty to ask something, given
14 what has come to my attention, but I do not wish to go
15 so far in the asking of the questions as to make an
16 affirmative suggestion to any juror that anything has
17 been afoot from defendants or counsel or anyone else, but
18 that's the inference they might well draw if one gets too
19 deep.

20 MR. GOTKIN: Your Honor, may I respectfully
21 know on what basis you dismissed Juror No. 10? In other
22 words, could we know the facts of what happened, your
23 Honor, and why you rendered your decision on it, because
24 you said that you didn't come to any conclusion as to --

25 THE COURT: I don't need to come to a con-

ws3

1
2 clusion. I took testimony of a relative of a defendant
3 and a juror as to a conversation that ensued between them
4 which left several matters quite unresolved. The relative
5 of the defendant indicated that the jury made an effort,
6 was making an effort to reach the defendant to speak with
7 the defendant. The juror was more equivocal denying
8 that there was anything inappropriate, but there neverthe-
9 less was a conversation in that general area, and the
10 entire incident was troublesome to the extent that there
11 was no question but the juror had to be excused.

12 MR. GOTKIN: We see those points, your Honor.

13 THE COURT: I'm having them sealed. They
14 will be available and should become appropriate at some
15 later time --

16 MR. GOTKIN: Can you tell us the name of the
17 defendant?

18 THE COURT: I don't know that that's
19 appropriate at this time. I'll give consideration to
20 that.

21 MR. RICHMAN: Your Honor, may I be heard?

22 Mr. Richman on behalf of Mr. Cowper.

23 It is obvious from what your Honor states that
24 every man and woman in this courtroom, either an attorney
25 or a defendant is under surveillance by representatives

WS4

1 of the Government. I'm compelled therefore at this
2 time to say that it was my considered judgment that the
3 bench out off the doorway leading into this courtroom was
4 wired some two or three weeks ago.

5 THE COURT: Mr. Richman, please.

6 MR. RICHMAN: I feel that it's a part of the
7 record, your Honor.

8 THE COURT: I don't want to hear that.
9 Now if you want to make an application to me at some later
10 point I'll hear it, but I'm only dealing now with the
11 interrogation of the balance of the jury panel.

12 Yes, Mr. Cohn.

13 MR. COHN: Your Honor, I assume that as to
14 the communications between two defendants in this case
15 that that came by representation by the Government in
16 camera.

17 THE COURT: It did not.

18 MR. COHN: It did not. Well, have the
19 attorneys for the defendants been advised?

20 THE COURT: Let me not get into this any deeper
21 than I need to in order to run this trial to a conclusion,
22 and at that time you may be advised of the premise.

23 Yes, Mrs. Rosner.

24 MRS. ROSNER: Your Honor, may I make this
25

ws5

1 suggestion. I would for the record lodge an objection for
2 the proceeding being carried out in camera without notifying
3 or permitting other defendants' counsel to participate.
4 May I suggest, your Honor, the very delicate problem we have
5 now is how to keep the rest of the jury from being affected
6 with the suggestion that there was something inappropriate
7 done with respect to one of their fellow jurors and I think,
8 Judge, that the condemnation of having excused the juror,
9 for whatever reason they are told he was excused, with a
10 voir dire personally of each juror in camera will ultimately
11 lead each and every other juror to feel that something
12 inappropriate was done which they will probably attribute
13 to the defense with respect to Juror No. 10.

14
15 I think the voir dire is appropriate, your
16 Honor, but I would suggest that we voir dire the jury as
17 a whole in the jury box and treat the matter as lightly as
18 possible without undue emphasis, and certainly without
19 taking them one at a time. I think if we do it one at
20 a time in camera with no one else present, without defense
21 counsel present, the jurors will be forced to feel that
22 there has been some method to reach one of their number
23 and it is simply impossible, your Honor, after that to go
24 forward with a jury presuming them to be impartial.

25 I simply would object to that procedure, Judge.

WS6

1 THE COURT: Would one of your number -- I
2 would be prepared to have one representative of the
3 defendants and one of the Government at that time if that
4 can be agreed upon by the defense counsel.
5

6 MRS. ROSNER: That would certainly help, your
7 Honor. I think treating the matter without representatives
8 from the defense would certainly make the jurors feel that
9 there was something done by the defense that had been
10 wrong or couldn't be revealed to them. So that certainly
11 would help, your Honor, but what can we gain from question-
12 ing them individually? Are there going to be any
13 more honest responses? I think, your Honor, that we
14 should put the questions to the panel as a whole and ask
15 merely for a show of hands, and then of course if the
16 unfortunate circumstances arises that someone has more
17 information it would be appropriate to voir dire them
18 singly.

19 THE COURT: I don't agree. I think that it's
20 got to be done on an individual basis so the answer that
21 come out do not cause complication.

22 MR. ANOLIK: Your Honor, Mr. Anolik for Mr.
23 Brightman.

24 Your Honor, I respectfully submit that the
25 juror, the sitting juror may be excused only for cause.

The United States against Jaun, I think so indicates.

I am concerned, your Honor, about the effect this may have upon the rights of my client to a fair and impartial jury. I had no participation, most respectfully, your Honor, in the decision to excuse that juror and I would ask a dismissal of the indictment as to my client.

THE COURT: That motion is denied. I take it that if one representative on each side is present in the robing room that you're agreeable?

MR. COHN: Could we not do it in open court one at a time?

MRS. ROSNER: Judge, I understand the problem. You're thinking about a juror voluntarily saying something upon the voir dire which will further infect the rest of the panel. I understand your Honor's thinking there, but couldn't we just ask the jurors merely by showing of hands without answering anything to answer the following questions.

The odds are 99 to 1 that no other juror is going to have any information to give us, your Honor, and the procedure --

MR. BELLER: I disagree.

MRS. ROSNER: The procedure in camera is so strongly suggestive, Judge, that I think in the first

ws8

1
2 instance if we simply say to the jury panel, please just
3 respond by a show of hands to the following questions, we
4 eliminate the risk of getting information which will con0
5 taminate the panel and we avoid what has to be a
6 tremendously suggestive procedure for the jurors.

7 If possible, Judge, I think we should handle
8 this with the minimum --

9 THE COURT: I agree. That's why I originally
10 thought I would do it on an informal basis with just the
11 Court in the robing room.

12 MRS. ROSNER: But they will understand, your
13 Honor, they will understand that something has happened
14 which has caused the adversaries to be excluded and they
15 must make the inference --

16 THE COURT: Then I'm agreeable, if you wish to
17 elect a representative --

18 MR. GOTKIN: Your Honor, I think respectfully,
19 your Honor, before we elect a representative we have to
20 know who the defendant involved was, your Honor?

21 MR. KEEGAN: Your Honor, if we have a repre-
22 sentative --

23 MR. GOTKIN: A question is open.

24 MR. KEEGAN: It's the same point. If you leave
25 a representative then there is every reason to infer that

1 ws9
2 it was that defendant or that lawyer's client who was
3 involved. I don't know who would be foolhardy enough
4 to volunteer for that job, but I suggest we go ahead with
5 Mrs. Rosner's suggestion and we all stay.

6 MR. GOTKIN: I'm content to let the Court handle
7 it on its own, your Honor.

8 MR. BELLER: Your Honor, I think the Court's
9 initial suggestion was the wisest. I don't think the jury
10 is going to draw the opposite inference if no counsel is
11 present. They will think this is a matter for the Court's
12 concern.

13 It was the Court's instruction as to not
14 speaking with anyone. It doesn't have to do with the
15 Government. It doesn't have to do with any particular
16 defendant as indeed it doesn't.

17 It has to do with the proper order of the trial
18 and that's something between the Court and the jury.
19 It has nothing to do with the defense counsel or the
20 Government.

21 I think the idea of having anyone in court
22 is not considering that.

23 It seems to me the purpose of the voir dire
24 is without any way infecting the jury panel is to determine
25 whether there's been any spill-over or any other possible

1 problem. You cannot get any response if jurors
2
3 are sitting in the courtroom of this size where they're
4 being asked to think about things that are very important.
5 I think the best procedure is for the Court to proceed in
6 camera with each defendant, very informally and I -- with
7 each juror very informatlly, as the Court is capable of
8 doing.

9 Since if counsel are present I would assume
10 that neither the Government nor the defense attorney would
11 be permitted to say anything within the juror's hearing,
12 that is if anybody had any suggestion or anything of that
13 sort it would have to be made outside the presence of the
14 juror.

15 Since all that would be going on is having'
16 somebody from the Government and the defense present to
17 watch the record suffices. Since the Court is only going
18 to make this minimal inquiry as to these two questions it
19 seems to me the best procedure is what the Court initially
20 thought and if counsel have any suggestions for questions
21 that in their mind would be better that will be the proper
22 inquiry.

23 MR. RICHMAN: Your Honor, on behalf of Charles
24 Cowper I fully agree with the Government. Blowing this
25 thing up other than casual inquiry by the Judge in the

2 robing room at best as he may see fit to satisfy himself
3 that the jury remain fair and impartial would work a
4 hardship and perhaps create a prejudice against my
5 client.

6 MR. LEFF: Judge, I just have a question.
7 I was wondering, I recognize the Court is going to be
8 asking questions and 16 remaining jurors, I was just
9 wondering whether or not No. 10 before he was excused was
10 asked the other way whether or not he in fact had dis-
11 cussed anything with the other jurors.

12 THE COURT: He was asked that and said he had
13 not.

14 MRS. ROSNER: In light of that response, your
15 Honor, from that juror, wouldn't it be wiser to proceed
16 with the the jury panel as a whole and if the only problem
17 is someone volunteering to affect the rest of the panel,
18 you ask him to simply respond by a show of hands and then
19 we can voir dire that juror. This procedure, your
20 Honor, is going to be so highly prejudicial that I really
21 do not feel the trial could proceed.

22 I would feel compelled to move for the
23 declaration of a mistrial if your Honor chose to pursue
24 this kind of voir dire. The jurors would be forced to
25

1 dws

2 conclude that something improper had been done with respect
3 to the excused juror. I think the only way we can
4 minimize the impact of what's happened today is to at
5 least initially voir dire them as a whole and pass the
6 matter as lightly as we can, and I haven't hear the Govern-
7 ment say anything as to why that procedure would be --

8 MR. BELLER: Because it's designed to prevent
9 the Court from learning the truth, that's why.

10 MRS. ROSNER: That's absolutely not so.
11 That absolutely doesn't meet the issue.

12 MR. BELLER: That's my reason. That's what
13 I believe, that that procedure is purposely and specifically
14 designed to prevent anybody from finding out if any other
15 jurors have been approached by anybody else from the Govern-
16 ment or from the defendants or from defense counsel.
17 That's one reason.

18 The second reason, your Honor --

19 MRS. ROSNER: Did you get your PhD in vituper-
20 ation, Mr. Beller?

21 THE COURT: Please.

22 MR. BELLER: The second reason, your Honor,
23 Mrs. Rosner seems to be assuming, and perhaps she's right,
24 given that setting that none of the jurors would raise
25 their hand. On the other hand, if as may very well

1 dws

2 be the case, when the Court says, has someone approached
3 the juror, discussed the case with the juror, and one
4 juror raises his hand the entire panel is going to know
5 that something has occurred.

6 MRS. ROSNER: They already know that something
7 has occurred with respect to that juror.

8 MR. BELLER: If they know it's not from the
9 Court and it's not from the Government.

10 MRS. ROSNER: Each one of them is going to know
11 that each has been voir dired and asked the same question
12 identically, which is the same as putting it to them together
13 as a group.

14 MR. BELLER: I'm concerned that someone is
15 raising his hand and saying, yes, I was approached.

16 MRS. ROSNER: We're going to tell them not to
17 say anything. That's precisely the point.

18 THE COURT: What's the consensus so I can get
19 some feeling?

20 MR. COHN: I think you should poll each of us,
21 your Honor.

22 MR. KRIEGER: The Court alone.

23 MR. COHN: I oppose the Court. I think you
24 should ask each lawyer. I think our positions vary and I
25 don't wish to be bound by any other attorney.

1 dws

2 MR. RICHMAN: Knowing your Honor, at this point
3 I think that Mr. Cohn speaking for me, at least in chambers
4 on robing matters before you every morning, I find very
5 reprehensible, and I insist that from now on on any matter
6 before the Court in the robing room, before the Court
7 starts, that if Mr. Cohn makes the application I be invited
8 to attend.

9 THE COURT: Mr. Yon, what do you say to this?

10 MR. YON: Court alone, your Honor.

11 THE COURT: Mr. Black?

12 MR. BLACK: I agree, the Court should handle it.

13 THE COURT: Mrs. Rosner?

14 MRS. ROSNER: I think it should be done in open
15 court the way I suggested.

16 THE COURT: Mr. Keegan?

17 MR. KEEGAN: I agree with Mrs. Rosner, your
18 Honor.

19 THE COURT: Mr. Frankel?

20 MR. FRANKEL: Court in camera.

21 THE COURT: Mr. Herwitz?

22 MR. HERWITZ: I'll leave to the judgment of the
23 Court.

24 THE COURT: Mr. Cohn?

25 MR. COHN: Court with all parties present.

1 dws

2 THE COURT: Mr. Reid?

3 MR. REID: Discretion of the Court, your Honor.

4 THE COURT: Mr. Martin?

5 MR. MARTIN: I believe the Court should handle it

6 in camera.

7 THE COURT: Mr. Rosenbaum?

8 MR. ROSENBAUM: The Court in camera.

9 THE COURT: Mr. Krieger has already said the
10 Court in camera.

11 Mr. Diller?

12 MR. DILLER: I agree, the Court in camera.

13 THE COURT: Mr. Figueroa?

14 MR. FIGUEROA: The Court and one representative,
15 your Honor.

16 THE COURT: Mr. Anolik?

17 MR. ANOLIK: The Court will all parties present
18 with the jurors interviewed individually.

19 THE COURT: Mr. Gotkin?

20 MR. GOTKIN: No, I was going to say the Court in
21 camera, but now I think would adopt Mr. Anolik's suggestion,
22 your Honor.

23 THE COURT: That would mean that the jurors
24 would sit in this witness stand.

25 Mr. Offer?

1
2 MR. OFFER: I think your Honor should handle it
3 in camera.

4 THE COURT: Mr. Baker?

5 MR. BAKER: In camera by the Court.

6 THE COURT: Mr. Richman?

7 MR. RICHMAN: I have already expressed my
8 opinion. I'll repeat, the Court in camera in his own
9 easy going way without making a Federal case out of it.

10 THE COURT: Mr. Mitchell?

11 MR. MITCHELL: The Court in camera.

12 THE COURT: Mr. Rubinstein?

13 MR. RUBINSTEIN: Your Honor, I'm in favor of
14 moving on without any inquiry of any of the jurors and I
15 think the jury has the duty, your Honor, to discuss it at
16 the end of the day, to come forward to the Court in whatever
17 manner they wish.

18 I'm very, very troubled, Judge, as to the
19 alternate suggestion, and I don't know we could avoid the
20 problem of removing a juror and the rest of the jury being
21 questioned without them realizing that somebody must have
22 approached somebody, and I'm really troubled, Judge.

23 I don't know, and your Honor has made a very
24 fair statement of what your Honor intends to say, I don't
25 know if that covers all bases or protects us to the degree

1 dws

2 but I feel is necessasry, because I just feel if the
3 entire panel is to be prejudiced by this.

4 THE COURT: So what is your --

5 MR. RUBINSTEIN: My feeling is to have it con-
6 tinue on without any inquiry of any of the jurors and inst
7 to make a statement at the end of each day that if anybody
8 contacts you, this is general instructions, not to discuss
9 the case and come forward to the Court, and leave it on
10 that basis, and I think that if the jury is dutybound to
11 tell the Court, and I don t think that by questioning them
12 separately you're going to get any different reaction if
13 they want to be the type of person that would come forward.

14 THE COURT: Mr. Leff?

15 MR. LEFF: Discretion of the Court, your Honor.

16 THE COURT: Mrs. Solleder?

17 MRS. SOLLEDER: Your Honor, I agree with Mr.
18 Rubinstein. I would say that particularly in view of the
19 fact that apparently Juror No. 10 has not spoken to the
20 other jurors I think leave it up to the jury to volunteer,
21 after being instructed by the Court, that if anybody had
22 approached them or any problems come up. I think that
23 bringing them in separately might dramatize something that
24 isn't automatically in their minds right now.

25 THE COURT: Thank you very much. We will

1 dws

2 recess until two o'clock.

3 MRS. ROSNER: Your Honor, are you going to
4 voir dire them in this hour?

5 THE COURT: No.

6 MRS. ROSNER: So we'll know what was said to
7 them when we come back.

8 THE COURT: Do we have other thoughts?

9 MRS. ROSNER: Could we hear the questions you're
10 going to ask again?

11 THE COURT: Yes. Two questions:

12 Whether anyone has spoke to you or tried to
13 speak to you about the case in any way. Whether anyone
14 has spoken to you or tried to speak to you about the case
15 in any way at all, and whether the jury has spoken to each
16 other about the merits of the case in any way at all.

17 MR. RICHMAN: Would you include that if anyone
18 from the Government or the defense, so that there be no
19 question about that?

20 MR. BELLER: I think it should be "anyone".

21 THE COURT: I think it should be anyone.

22 MRS. ROSNER: Judge, may I suggest perhaps
23 to take away the juror's mind from the true thrust of the
24 inquiry, invert the order of those questions and ask them
25 whether they have communicated with each other concerning

the merits of the case.

THE COURT: I will do that.

MRS. ROSNER: And secondly whether anyone at all has spoken with them concerning the merits of the case or attempted to speak with them, and I think in that way we may alleviate their surmising the true thrust.

THE COURT: That's a good suggestion and I will do it.

MR. FRANKEL: May I suggest that alternately ask if they have spoken to anyone else about the case?

MR. GOTKIN: Your Honor, are you going to tell them that Juror No. 10 was excused and the reason why he was excused?

THE COURT: I had in mind not to.

MR. GOTKIN: Till after all the inquiry is over?

THE COURT: I have in mind not to at all. Just to tell the first alternate that Juror No. 10, the Court has excused Juror No. 10, and the first alternate will take his place.

MR. COHN: Was Juror No. 10 instructed not to speak to the other jurors at this point?

THE COURT: He was.

MR. RUBINSTEIN: At this point in view of the

1 dws

2 fact we're going to lunch I don't know if anything would
3 happen. I've been caught totally by surprise. Is it
4 possible that maybe during the luncheon recess the lawyers
5 could get together and caucus and maybe we would have a
6 more definitive position before your Honor goes ahead
7 with what apparently is the majority of the feeling at
8 this particular time.

9 MRS. ROSNER: Let's come back at quarter to
10 two.

11 THE COURT: I will then come on the bench at
12 five to two.

13 MR. BELLER: Your Honor, I wonder if the jury
14 could have their lunch in the jury room today?

15 MRS. ROSNER: That's really getting to be too
16 much.

17 MR. BELLER: That's interesting.

18 MR. COHN: Your Honor, Mr. Beller makes all
19 these allusions. There are chambers conferences which
20 I'm sure the Court invited for some reason obviously repre-
21 sentations made by the Government, and we're battling in
22 the dark with no information.

23 Now if this involves tampering with the jury
24 or anything then I think we're privy to know all these
25 things. We denied our clients full information, and if

1 dws

2 Mr. Beller is going to continue to infer that somebody
3 here is trying to reach a juror or that it may have
4 happened, and I think it's time to come out in the open, or
5 that he should stop this.

6 MR. BELLER: Your Honor, I think it's a fair
7 inference certainly, and that certainly what I intended to
8 infer.

9 THE COURT: Mr. Beller, I think I fairly rep-
10 resented on the record the substance of what I heard this
11 morning, and the basis for the action, and I really don't
12 think we need to go further than that at this moment.

13 MRS. SOLLEDER: Your Honor, was Government
14 counsel in with the Court this morning when all this was
15 taking place, in chambers?

16 THE COURT: Yes.

17 MRS. SOLLEDER: Why can't we read the minutes
18 of what happened then, your Honor? I mean, why should
19 they be sealed to us? I don't understand that.

20 THE COURT: Because I'm trying to try this case
21 as fairly as possible without getting collateral issues
22 that come to the forefront, and I'm trying to keep a
23 collateral issue from becoming a central issue.

24 MRS. SOLLEDER: I understand that, your Honor.
25 Why can't we read just so that we know what happened and

dws

4216

MR. BELLER: I mean even the usual, good
afternoon, how are things, how are you and so forth.

MR. RICHMAN: If your Honor pleases, if I want
to say "good afternoon" to a juror I will.

(Lunchon recess.)

--

AFTERNOON SESSION

2 P.M.

(In open court, jury not present.)

THE COURT: I take it there has been in more or less formal fashion a caucus of counsel.

MR. COHN: You take it wrong, Judge. There has been some itinerant schmoozing, as they say, that's all. We have not entered into anything formal.

THE COURT: I take it then I am left to come to my own conclusion.

MR. COHN: I think you'll have to. I don't think they can agree on anything.

THE COURT: Incidentally, I have concluded that starting tomorrow I am going to send the jury to lunch at one place where the marshal attends.

MR. COHN: May we be advised of the place so we can stay away?

THE COURT: If you see 16 people walking in one body with a marshal, that's enough notice to.

MRS. ROSNER: Before you proceed, may I make a suggestion. This is the second occasion where something has happened at the trial and the government has been party to it, and the defense has not, and has only been told after the fact. The first was the 3500 material and now

1 lph 2

2 today, where the note of certain agents who took Parker's
3 statements, were gone over in camera and no defense counsel
4 was advised until after the fact that the court has ruled
5 on the 3500 material. I will ask the court this much,
6 although you might decide at some other point to have a
7 proceeding ex parte, would the court at least notify defense
8 counsel, and I do wish the record to reflect I object to
9 not having the minutes of what happened this morning and
10 not to aid to participate in the stages before the juror
11 was excused.

12 MR. HERWITZ: May I make a record in view of
13 the state since we don't know what was the basis of your
14 Honor's opinion and we cannot object to it, except at some
15 future time when there might be cause to have it revealed
16 to us. May we for the record all object to it subject
17 to its being revealed hereafter.

18 THE COURT: By all means, you have that right.

b2 19 MRS. ROSNER: I would join in that.

20 THE COURT: I can, in a nutshell say, as I under-
21 stand the responsibility as the trial judge, it is to see
22 to it that all sides in this case have a fair trial including
23 a fair and impartial jury. I concluded in the case of
24 this one juror that that juror would not be fair and im-
25 partial as a sitting juror, and there are five alternates

1 hph 3

2 whom the law empowers me to substitute, to see to it that
3 a fair and impartial jury is sitting on the issues and
4 therefore I chose to replace this juror with what I trust
5 would be an impartial and fair juror to sit on the issues.

6 MR. HERWITZ: I personally, and I'm sure all
7 counsel agree that is your intention and you have carried
8 out what you believe but we would like to note our objection
9 on the record.

10 THE COURT: I will interrogate the jurors in-
11 dividually with the questions I have propounded to you earlier.
12 The majority of you are in accord and I believe it will be
13 a fair proceeding here and minimize the effect this may
14 have.

15 MR. COHN: Are you going to seal the record
16 with what you are going to do now, your Honor?

17 THE COURT: No. You may see that, by all means.

18 MR. BAKER: Will your Honor inform the jurors
19 what the reason is for the unusual procedures, en masse?

20 THE COURT: I have no intention whatsoever
21 of doing more than just speaking to them and I have concluded,
22 subject to anybody's disagreement with me, and my considering
23 their disagreement, that when the jury is back in the box
24 and juror alternate number 1 is put in the position, I am
25 merely going to say to the jury that the court has excused

1 hph4

2 juror number 10, and that alternate number 1 would take his
3 seat. I propose to say nothing further on the subject.

4 MR. LEFF: Your Honor, if it does come to
5 pass at least a juror does indicate to the court in the
6 session right now that they have spoken to others, how
7 does the court at that point intend to proceed as far as
8 that juror is concerned?

9 THE COURT: I will cross that bridge when I
10 come to it. I probably will confer with you.

11 MR. ANOLIK: Your Honor, there was some collougy
12 after I made my statement last time. My position is that
13 the court, and I don't for one moment suggest the court
14 did not act out of good motive, but I don't think the court
15 had a right to discharge the juror without at least con-
16 sulting counsel and I want the record clear that I am asking
17 for a dismissal of indictment or mistrial.

18 THE COURT: I understand. That is denied.

19 MRS. ROSNER: One more question, Judge, and that
20 is this morning unless I mistook what you said, you indicated
21 one or two defendants were involved in this. I frankly
22 would like to be notified if my client is involved and
23 I wish the court would at least call those counsel up whose
24 clients are involved in the incident in any way.

25 THE COURT: I will note your remarks and consider

1 them accordingly.

2 MR. GOTKIN: How long will this take, Judge?

3 THE COURT: I hope no more than half an hour.
4 Let's be in recess for half an hour.

5 (In the robing room)

6 (Juror number 1 entered the robing room)

7 BY THE COURT:

8 Q Sit down, if you will, for a second, please.
9 Ms. Blau, I just wanted to ask a couple of questions of
10 you. You will recall that at the beginning of the trial and
11 along the way from time to time I have instructed you all
12 not to discuss the case amongst yourselves or with anybody
13 else. In line with that, may I ask you whether any of you
14 jurors have been speaking to each other about the merits
15 of this case in any way, as far as you know.

16 A What do you mean by "the merits"?

17 Q I'm sure that you probably make observations
18 about what the people look like or how long they've been
19 on the stand or things of that kind.

20 A No.

21 Q I am talking about how they conclude, what they
22 think of this or think of that.

23 A No, excepting something very simple. The other
24 day, I mean, I nearly cracked up because of one of the
25

1 hph6

2 lawyers and a lot of people cracked up so we sometimes
3 mention that, when Mr. Richman spoke or something like that.

4 Q But nothing to do with the thoughts of the
5 witness or the outcome or anything of that kind?

6 A No.

7 Q The other question in line with all of that:
8 I just want to know whether anyone has spoken to you about
9 the case or attempted to speak to you about the case in
10 any way.

11 A No, nobody.

12 THE COURT: Thank you very much.

13 (Jury number 1 left the robing room)

14 (Juror number 2 entered the robing room)

15 BY THE COURT:

16 Q Mr. Crespo, just a couple of questions of you,
17 if I may. You may remember, and I'm sure you do that at
18 the beginning and during the trial I had talked to you about
19 not discussing the case with each other or with anybody else.

20 In line with that, have any of you jurors been
21 discussing the merits of this case amongst each other?

22 A No.

23 Q You have not?

24 A No. We have been talking about something else.

25 Q Has anybody outside spoken to you in any way

1 hph7

2 about the case?

3 A No, because when I get out of here, I walk to the
4 train.

5 Q They have not talked to you at all about the case?

6 A No.

7 THE COURT: Thank you very much.

8 (Juror number 2 left the robing room)

9 (Juror number 3 entered the robing room)

10 BY THE COURT:

b3 11 Q Mr. Rauschert, how are you?

12 A Fine, thank you.

13 Q Back on your feet, so to speak?

14 A Yes.

15 Q Just a couple of very brief questions.

16 You will recall all my various instructions
17 about not talking to each other or anybody else about the
18 case.

19 A Yes.

20 Q Have any of you jurors, members of the jury
21 spoken to each other about the merits of the case in any way?

22 A No.

23 Q Has anybody else spoken to you or attempted to
24 speak with you about the case in any way?

25 A No.

hph 8

THE COURT: Thank you very much.

(Juror number 3 left the robing room)

(Juror number 4 entered the robing room)

BY THE COURT:

Q Mr. Springman, just a couple of very simple questions. You will recall all my various admonitions about not speaking to anybody about the case, and not to talk about it amongst each other. Has the jury been talking to each other about the merits of this case in any way, as far as you know?

A No, your Honor.

Q The merits of the case, I am talking about now.

A No.

Q Has anyone spoken to you or any other members of the jury, as far as you know, or attempted to talk about this case in any way?

A No, your Honor.

THE COURT: Thanks very much.

(Juror number 4 left the robing room)

(Juror number 5 entered the robing room)

BY THE COURT:

6 Mr. Willner, sit down for just a second. Just a couple of very simple questions. You will remember that I have been giving you instructions from time to time

1 hph 9

2 about not discussing the case with anybody here amongst
3 each other or anybody else. In that regard, has the jury
4 been discussing the merits of this case in any way, any
5 juror discussing with any other juror, as far as you can
6 recall?

7 A By merits do you mean -- what do you mean?

8 Q Other than casual observations about perhaps the
9 people involved. I mean about the feelings of the case.

10 A No.

11 Q That kind of thing is what I am talking about.

12 A I would say that we have talked about what
13 has produced laughs in the courtroom or something like that,
14 but nothing that would in any way decide an issue.

15 Q Has anybody else spoken to you or tried to
16 speak to you about this case in any way?

17 A Not at all.

18

19

20

21

22

23

24

25

pm

1

dws

2

(Juror Doris Speisman entered the room.)

3

THE COURT: Hello, Miss Speisman. ^Q Sit down

4

here for a moment.

5

BY THE COURT:

6

Q Just a couple of very quick questions.

7

You will recall my numerous admonitions to you?

8

A Yes.

9

Q About not talking to anybody about this case?

10

A Yes.

11

Q Not between the jurors or anybody at home or

12

anywhere else. And I just want to ask you whether the

13

jury has been talking about what I would regard as the

14

merits of this case in any way?

15

A No.

16

Q And has anybody else spoken to you or attempted

17

to speak to you about this case in any way?

18

A No.

19

THE COURT: Okay, thank you very kindly.

20

(Juror Speisman left the room.)

21

7 (Juror Lawrence Hammet entered the room.)

22

THE COURT: Mr. Hammet, sit down here for a

23

moment, if you will.

24

BY THE COURT:

25

Q You will remember my various admonitions not

1 dws

4227

2 to talk to anybody about the case or anybody you know
3 discussing it among your fellow jurors?

4 A Yes.

5 Q In that connection let me just ask you a
6 couple of very quick questions.

7 Has the jury been discussing the merits of this
8 case in any way at all as far as you know?

9 A No, not as far as I know, no.

10 Q Has anybody else ever spoken to you or attempted
11 to speak to you about this case at all?

12 A No, not really, not nobody, around the court,
13 you know, not really.

14 Q And when you say "not really", I take it by
15 that you mean nobody has spoken to you?

16 A No, no.

17 THE COURT: Thank you, very much.

18 (Jury Hammett left the room.)

19 (Juror Antonio Perez entered the room.)

20 THE COURT: Mr. Perez, sit down a minute, sir.

21 Mr. Perez, how are you, sir?

22 4 JUROR PEREZ: Fine, thank you.

23 BY THE COURT:

24 Q You will recall my various admissions to you?

25 A Yes.

1 dws

4228

2 Q Not to discuss the case amongst each other
3 or with anybody else?

4 A Yes.

5 Q Has the jury been talking amongst itself about
6 the merits of this case as I would call it?

7 A Not that I know, sir.

8 Q All right. Anybody else talk to you about the
9 case?

10 A NO, sir.

11 Q Or tried to talk to you about the case?

12 A No, sir, not to me.

13 THE COURT: Good, thank you very much.

14 JUROR PEREZ: All right, sir. Thank you,
15 sir.

16 (Juror Perez left the room.)

17 (Juror Charlene Hicks entered the room.)

18 THE COURT: Hell, Miss Hicks. Sit down here
19 if you will for a minute.

20 JUROR HICKS: Okay.

21 BY THE COURT:

22 Q You will recall that I've been instructing
23 you all from time to time not to talk about this case amongst
24 each other or with anybody else?

25 A Yes.

Q Has the jury been discussing this case at all amongst each other, any jurors talking to each other about the merits of the case?

A No, not to my knowledge.

Q Anybody else been talking to you about this case or tried to talk to you about this case?

A No.

THE COURT: Okay, thank you very kindly.

(Juror Hicks left the room.)

(Juror Anerew M. Breen entered the room.)

THE COURT: Mr. Breen, be seated, please.

JUROR BREEN: Hell, your Honor.

BY THE COURT:

Q You will remember I admonished you many times about not talking to each other as jurors about the merits of the case or talking to anybody at home about it and so on.

Has the jury been talking about the merits of this case at all as far as you know?

A Not about the merits of the case, no, sir.

Q Anybody else talked to you or tried to speak with you about the case in any way at all?

A Well, my family has asked me about the case and I've told them general procedural type of things, but

1 dws

2 I haven't really gone into any of the detail.

3 Q Other than that, nothing at all I take it?

4 A No.

5 THE COURT: Okay, thanks very kindly.

6 JUROR BREEN: Okay.

7 (Juror Breen left the room.)

8 (Juror Stephanie Streck entered the room.)

9 THE COURT: Miss Streck, how are you this
10 afternoon?

11 JUROR STRECK: Fine, how are you?

12 THE COURT: Sit down.

13 JUROR STRECK: I've never been so close to you.

14 BY THE COURT:

15 Q Well, just a couple questions. You remember
16 I have instructed you from time to time about not talking
17 to anybody about the case?

18 A That's correct.

19 Q Not discussing it amongst each other. Has the
20 jury been heeding that admonition in mind?

21 A I believe so.

22 Q And has anybody else attempted to talk to you
23 about the case?

24 A No.

25 Q Or spoken to you about it?

A No, no.

THE COURT: Okay, thank you.

JUROR STRECK: Your're welcome, thank you.

(Juror Streck left the room.)

(Juror Buske entered the room.)

THE COURT: Hell, Mr. Buske, sit down if you would for just a second here.

BY THE COURT:

Q You will recall that I'd admonished you ladies and gentlemen from time to time not to talk about the case amongst each other or with anybody else?

A Yes.

Q And have you as far as you know been, all been heeding that admonition in mind?

A Yes.

Q As between the jurors themselves?

A Yes.

Q And has anyone else spoken to you or attempted to speak to you about this case in any way?

A No.

THE COURT: Good, thanks very kindly.

(Juror Buske left the room.)

(Juror Davis entered the room.)

THE COURT: Miss Davis, just have a seat,

1 dws

2 please. Sit down here for a second. Just a couple of
3 very brief questions.

4 BY THE COURT:

5 Q You will recall many times I've told you all
6 not to discuss the case amongst each other or with anybody
7 else?

8 A Yes.

9 Q Have you jurors been heeding that admonition
10 of mine not to talk amongst each other about it?

11 A As far as I know.

12 Q And has anybody else spoken to you about the
13 case or tried to speak to you about the case?

14 THE COURT: All right, thanks very much.

15 (Juror Davis left the room.)

16 (Juror Slawitschek entered the room.)

17 THE COURT: Miss Slawitschek, have a seat,
18 please. Just a couple of questions.

19 2 BY THE COURT:

20 Q You will recall my many admonitions not to
21 discuss the case amongst each other or with anybody else?

22 A Yes, sir.

23 Q And has the jury been honoring that admonition?

24 A Yes.

25 Q And has anybody else spoken to any of you or

1 dws

4233

2 attempted to speak to any of you?

3 A No, no.

4 THE COURT: Good, thank you very kindly.

5 JUROR SLAWITSCHKE: You're very welcome.

6 (Juror Slawitschek left room.)

7 (Juror Hull entered room.)

8 THE COURT: Miss Hull, please be seated a
9 second if you will.

10 JUROR HULL: Thank you.

11 BY THE COURT:

12 Q You, I'm sure, recall the many evenings I've
13 said to you, don't talk about the case amongst each other
14 or with anybody else?

15 A Right.

16 Q And has the jury been honoring that admonition,
17 you jurors been talking to each other about the merits
18 of the case?

19 A Not, no, no.

20 Q And has anybody else talked to you about the
21 case or tried to talk to about the case?

22 A No, no.

23 THE COURT: Okay, thanks very kindly.

24 Juror Hull left the room.)

25 (Juror Rey entered the room.)

1 dws

4234

2 THE COURT: Hello, sit down if you will for
3 just a second.

4 BY THE COURT:

5 Q Miss Rey, you will recall the many times I've
6 spoken to you about the jury not discussing the case
7 amonst each other or with anybody else?

8 A Yes.

9 Q And I just want to find out whether the jury
10 has been honoring that admonition of mine? Have you been
11 discussing the merits of the case amonst each other at all?

12 A No, no, not at all.

13 Q Has anybody else spoken to you about the case
14 or attempted to speak to you about the case at all?

15 A No, not directly to the case, no.

16 THE COURT: Okay, thanks very much.

17 JUROR REY: Oh, you're welcome.

18 (Continued on next page.)
19
20
21
22
23
24
25